RECEIVED
NOV 8 1978
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

_____TERM, 1978

NO. 78-5693

DANIEL ROSS, Petitioner,

v.

KAYE BYRD, individually and in her person and official capacity as Case Analyst of the State of North Carolina Parole Commission; JAMES G. WOODARD, individually and in his person and official capacity as Chairman of the State of North Carolina Parole Commission, Respondents.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT AT RICHMOND NO. 78-6373 (Formerly Misc. NO. 78-8296)

DANIEL ROSS, Pro se
Franklin County Prison
Post Office Box 155
Bunn, North Carolina 27508

INDEX

	PAGE
Declaration to sue as a Pauper	c
Petition for Writs of Certiorari	b
Opinion below	2
Jurisdiction	2
Question Present	2
Constitutional Privison Involved	4
Statement of the Case	3
Reasons for Granting the Writs	5
Conclusion	11
Certificate of Service	11
Childs v. United States Board of Parole, 511 F2d 1270 (D.C.Cir. 1974)	6
United States ex rel. Johnson v. Chairman, 500 F2d 925 (Ca2 1974)	6
King v. United States, 492 F2d 1337 (CA7 1974)	6
Birdwell v. Ciccone, 490 F2d 310 (CA8 1973)	6
Cooley v. Sigler, 381 F2d Supp 441 (D. Minn 1974)	7
Franklin v. Shields, 399 F. Supp 309 (W.D. Va. 1975)	7
Bradford v. Weinstein, 519 F2d 728 (CA4 1974), vacated as moort, 96 S Ct 347 (1975)	7
Grattan v. Sigler, 525 F2d 329 (CA9 1975)	7
Robeinson v. United State Board of Parole, 403 F Supp 638 (W.D.NY. 1975)	7
Kohlan v. Norton, 380 F Supp 1073, 1075 (D. Conn. 1974)	7
Calabra v. United States Board of Parole, 525 F2d 660 (CA5 1975)	10
Manos v. United States Board of Parole, 399 F Supp 1103 (M.D. PA. 1975	10
Fisher v. United States, 382 F Supp 241 (D. Conn 1974)	10
Rothman v. Director U. S. Board of Parole, 403 F Supp 188 (N.D. GA. 1975)	10
Leonard v. Mississippi Parole Board, 373 F Supp 699 (N.D. Miss 1974)	11
Bradford v. Weinstein, supra.	11
Scott . Kentucky, Parole Board, 197 S Ct 342 (1976)	11

IN THE

SUPREME COURT OF THE UNITED STATE

_____ TERM, 1978

_____ -

NO. _____

_____

RECEIVED
NOV 8 1978
OFFICE OF THE CLERK
SUPREME COURT, U.S.

DANIEL ROSS, 78-5693 PETITIONER,

v.

KAYE BYRD, individually and in her person and official capacity as Case Analyst of the State of North Carolina Parole Commission; JAMES C. WOODARD, individually and in his person and official capacity as Chairman of the State of North Carolina Parole Commission, Respondents.

_____

DECLARATION TO SUE AS A PAUPERIS

_____

I, DANIEL ROSS, declare under the penality of perjury that I am the Petitioner in this matter and have a good cause of action against the respondents and desire to bring such action in this Court; that I am unable to give bond or make the deposit required by law to enable me to begin said action. That I am unemployed. The date of last employment was two years ago. That I have not received with the post twelve months any money from any of the following sources: business, profession or from self-employment; rent payments, interest or dividends; pensions, annuties or life insurance payments; gifts or inheritance, or any other sources. That I do not own any cash, or have money in a checking or saving account. That I do not own any cash, or have money in a checking or saving account. That I own no real estate, stocks, bonds, notes, automobiles, or other valuable property. That this cause of action has been properly exhausted in the courts below.

WHEREFORE, petitioner prays the Court that an order may issue forthwith allowing him to bring said action as a pauper without laches. This the 4th day of November, 1978

_____ -

DANIEL ROSS, pro se

RECEIVED
NOV 8 1978
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

_____TERM, 1978

NO. 78-5693

DANIEL ROSS, Petitioner,

v.

KAYE BYRD, individually and in her person and official capacity as Case Analyst of the State of North Carolina Parole Commission; JAMES C. WOODARD, individually and in his person and official capacity as Chairman of the State of North Carolina Parole Commission, Respondents.

PETITION FOR WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT AT RICHMOND
NO. 78-6373 (Formerly Misc. NO. 78-8296)

PetitionerDaniel Ross, a state prisoner, respectfully prays that writs of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on October 16, 1978, and that this Honorable Court will treat the pro se petition to less strengent standards than formal pleadings drafted by lawyers because the petitioner lack the legal expertise including access to facilities to extent as lawyers. No appendix is attached due to petitioner's indigency and lack of a copying machine at the present place of confinement, the Franklin County Prison Unit Law Library to redress this Honorable Court.

OPINION BELOW

On October 16, 1978, the United States Court of Appeals for the Fourth Circuit for the reasons stated in the United States District Court's order dated July 6, 1978 affirmed said order filed July 7, 1978 sua sponte dismissing the complaint in Ross v. Byrd, et al., C/A NO. 78-0172 (E.D. N. C., July 7,1978).

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on October 16, 1978, and this petition for certiorari was fined within 90 days of that date. This Court's jurisdiction is invoked under Rules 12(3), Rule 19 and 28 USC 1651(a).

QUESTION PRESENTED

HAS THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT RENDERED A DECISION IN FRANKLIN v. SHIELDS, __F.2d __(1978) AS OPPOSED TO JULY 7, 1978 to wit ROSS v. BYRD, NO. 78-317-CRT (E.D.N.C.) AND IN CONFLICT WITH THE DECISION OF THE SECOND, SEVENTH, EIGHTH AND D. C. COURT OF APPEALS ON THE SAME MATTER; OR HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT. IF SO, DOES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT HAVE ANY APPLICATION TO THE CONDUCT OF PROCEEDING BY A PAROLE BOARD IN STATES WHERE PAROLE IS NOT MANDATORY BUT IS GUARANTEED TO EVERY PRISONER A REVIEW AND CONSIDERATION OF HIS CASE UPON ITS MERITS AND THE PRISONER DESIRING ACCESS TO THE INFORMATION IN HIS PAROLE FILE ASSERTING THAT SOME OF THE FACTS FOUND THEREIN ARE ERRONEOUS, CONSTITUTIONALLY BE DENIED ACCESS AND NOTICE OF INTENTION TO SO CLASSIFY TOGETHER WITH FACTUAL DATA UPON WHICH THE BOARD BELIEVES SUCH CLASSIFICATION APPROPRIATE NO LATER THAN THE IN PRISON INTERVIEW WHEN IT WOULD BE A GRIEVOUS LOSS FOR A PRISONER BY REASON OF A COMPLETELY EX PARTE PROCEEDING, AND THE RESULTING INCREASED OPPORTUNITY FOR COMMITTING ERROR, TO BE DENIED PAROLE AND REQUIRED TO SERVE MORE OF HIS TERM BECAUSE THE ATTENTION OF THE PAROLE BOARD WAS NOT CALLED TO DATA TENDING TO INDICATE THAT PAROLE SHOULD BE GRANTED, OR FOR A PRISONER WHOSE INCARCERATION HAS AS IT ULTIMATE OBJECTIVE THE PRISONER'S REHABILITATION TO FAIL TO KNOW, LET ALONE UNDERSTAND, WHY PAROLE IS DENIED HIM AND HENCE WHAT CHANGES IN ATTITUDES, HABITS, AND THE LIKE WILL BE REQUIRED IF HE IS EVER TO BE SUCCESSFUL IN OBTAINING PAROLE, UNLESS, OF COURSE, THERE IS FOUND TO BE SOME COMPELLING STATE INTEREST IN WHY HE SHOULD NOT BE ADVISED?

STATEMENT OF THE CASE

Petitioner Daniel Ross, filed a civil rights action in the United States District Court for the Eastern District of North Carolina, seeking monetary relief together with injunction and a declaration with regard to certain practices and procedures of the North Carolina Parole Board to grant or to deny access to information in his parole file. Jurisdiction was found upon 28 USC 1343(3),(4) and 42 USC 1983. The petitioner asked the district court to mandatorily prohibit, via injunction, the respondents, Kaye Byrd, among the North Carolina Parole Board, from similar acts and omissions in order to deter respondent from, in the future, refusing an failing to furnish access to information in parole files no later than his in prison interview in August, 1978, and; an opportunity to explain or rebut evidence and to present an affirmative case in order that he might receive every possible consideration of parole - was fatal since the state had created the right to consideration of parole, the deprivation of that right may well be a grievous loss. That anything less, makes the review no more than a sham when by reason of a completely ex parte proceeding, and the resulting increased opportunity for committing error, to be denied parole and required to serve more of his term because the attention of the Parole Board was not called to data tending to indicate that parole should be granted, or for a prisoner whose objective incarceration has as its ultimate objective the prisoner's rehabilitation to fail to know, let alone understand, why parole is denied him and hence what changes in attituded, habits, and the like will be required if he is ever to be successful in obtaining parole, unless, of course, there is found to be some compelling state interest in why he should not be advised.

Petitioner made no claim that he was entited to immediate release. Nor did he claim that he has a right to parole so that he would be released prior to the full service of his sentence less whatever credits the State of North Carolina may grant him. Petitioner makes no claim that he has the right to inquire into the internal functioning of the parole board or the adjudicatory processes by which paroles are granted or denied. The sole thrust of petitioner's complaint is a constitutional attack upon the procedures of the respective parole board. The substantive question is not the right to parole but the right to procedural due process in the consideration of parole. Despite this important constitutional question, on July 7, 1978, the district court dismissed the complaint sua sponte holding that an en banc Fourth Circuit having held that there is no constitutional right of access to the information in petitioner's parole file, Franklin v. Shields, __F2d __ (1978), which order was affirmed on October 16, 1978 by the United States Court of Appeals for the Fourth Circuit for the reasons stated in Ross v. Byrd, NO. 78-317-CRT (E.D. N.C. July 7, 1978)

CONSTITUTIONAL PROVISION INVOLVED

1. ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law. . . ."

2. " 148-58. Time of eligibility of prisoners to have cases considered. *** All prisoners shall be eligible to have their cases considered for parole when they have served a Fourth of their sentence, if their sentence is determinate, and a Fourth of their minimum sentence, if their sentence is indetermine; provided, that any prisoner serving sentence for life shall be eligible for such consideration

when he has served 20 years of his sentence, Nothing in this section shall be construed as making mandatory the release of any prisoner on parole, but shall be construed as only guaranteeing to every prisoner a review and consideration of his case upon its merits. (1935, c. 414, s. 8; 1955, c. 867, s. 5; 1973, c. 1201, s. 5). At all times relevant hereto, NORTH CAROLINA GENERAL STATUTES 148-58 has been fully operative.

REASONS FOR GRANTING THE WRITS

THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT HAS RENDERED A DECISION IN FRANKLIN v. SHIELDS, __F2d __(1978) AS OPPOSED TO JULY 7, 1978 TO WIT ROSS v. BYRD, NO. 78-317- CRT (E.D.N.C.) AND IN CONFLICT WITH THE DECISION OF THE SECOND, SEVENTH, EIGHTH AND D. C. COURT OF APPEAIS ON THE SAME MATTER; OR HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT. THE DEDISION BELOW IS ERRONEOUS IN THAT THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT HAVE SOME APPLICATION TO THE CONDUCT OF PROCEEDING BY A PAROLE BOARD IN STATES WHERE PAROLE IS NOT MANDATORY BUT IS GUARANTEED TO EVERY PRISONER A REVIEW AND CONSIDERATION OF HIS CASE UPON ITS MERITS AND THE PRISONER DESIRING ACCESS TO THE INFORMATION IN HIS PAROLE FILE ASSERTING THAT SOME OF THE FACTS FOUND THEREIN ARE ERRONEOUS, CANNOT CONSTITUTIONALLY BE DENIED ACCESS AND NOTICE OF INTENTION TO SO CIASSIFY TOGETHER WITH FACTUAL DATA UPON WHICH THE BOARD BELIEVES SUCH CLASSIFICATION APPROPRIATE NO LATER THAN THE IN PRISON INTERVIEW WHEN IT WOULD BE A GRIEVOUS LOSS FOR A PRISONER BY REASON OF A COMPLETELY EX PARTE PROCEEDING, AND THE RESULTING INCREASED OPPORTUNITY FOR COMMITTING ERROR, TO BE DENIED PAROLE AND REQUIRED TO SERVE MORE OF HIS TERM BECAUSE THE ATTENTION OF THE PAROLE BOARD WAS

NOT CALLED TO DATA TENDING TO INDICATE THAT PAROLE SHOULD BE GRANTED, OR FOR A PRISONER WHOSE INCARCERATION HAS AS IT ULTIMATE OBJECTIVE THE PRISONER'S REHABILITATION TO FAIL TO KNOW, LET ALONE UNDERSTAND, WHY PAROLE IS DENIED HIM AND HENCE WHAT CHANGES IN ATTITUDES, HABITS, AND THE LIKE WILL BE REQUIRED IF HE IS EVER TO BE SUCCESSFUL IN OBTAINING PAROLE, UNLESS, OR COURSE, THERE IS FOUND TO BE SOME COMPELLING STATE INTEREST IN WHY HE SHOULD NOT BE ADVISED. The first significant case holding that due process attached to parole hearings was Childs v. United States Board of Parole, 511 F2d 1270 (D. C. CA. 1974), where the court stated:

> "THE BOARD HOLDS THE KEY TO THE LOCK OF THE PRISON. IT POSSESSES THE POWER TO GRANT OR TO DENY CONDITIONAL LIBERTY . . . THE RESULT OF THE BOARD'S EXERCISE OF ITS DISCRETION IS THAT AN APPLICANT EITHER SUFFERS A 'GRIEVOUS LOSS' OR GAINS A CONDITIONAL LIBERTY. HIS INTEREST ACCORDINGLY IS SUBSTANTIAL. WE THINK IT FOLLOWS THAT THE PAROLE DECISION MUST BE GUIDED BY MINIMAL STANDARDS OF DUE PROCESS OF LAW. . . . "

Since Childs, most courts faced with the issue have held that a prisoner is entitled to some due process safeguards in the parole hearing stage. The particularly due process protections discussed by the courts unually involve (1) meaningful reasons for the denial of parole, (2) access by the prisoner to his or her files or to information to be considered by the board and an opportunity to rebut erroneous information, (3) comprehensive explanatory guideliness for prisoners with respect to the rules and procedures, (4) representation by counsel or an advisor and; (5) an opportunity for the prisoner to present an affirmative case for parole; e.g., See United States ex rel. Johnson v. Chairman, 500 F2d 953 (CA2 1974); vacated as moot, 419 US 1015 (1974); Childs v. U. S. Board of Parole, supra; King v. United States, 492 F2d 13137 (CA7 1974); Birdwell v. Ciccone, 490 F2d 310 (CA8 1973).

The importance of this due process safeguard was amplified in Cooley v. Sigler, 381 F Supp 441 (D. Minn. 1974), the court held that, as a general rule, due process requires that a parole applicant be given access to the information and files which are to be considered by the Board in ruling on parole. This dedision was based on the court's concern that files can contain erroneous information which, unless prisoner have an opportunity to review it, can be used to deny him parole. And the Grattan v. Sigler, 525 F2d 329 (CA9 1975) court held that the prisoner must be given data upon which reclassification of offense severity rating is based prior to hearing and afforded opportunity to explain or rebut evidence. The rationale that a parole applicant be given access to the information and files are based on the trend that most prisons prepare progress reports on prisoners to be submitted to the Parole Board wherein the prisoner's activities within the prison and detailed, e. g., jobs, attitudes, disciplinary reports and participation in various prison programs. Also included in those reports are criminal records, past convictions, family ties, martial status, employment records, etc. Generally case workers prepare those reports based upon information contained in prisoner's central file. Prior to submission of reports to the parole board in the Federal System, the prisoner is supposed to sign it, showing that he has read and agree with the contents thereof, to ascertain it accuracy. If the prisoner find mistakes or erroneous information in his in his parole file he can call it to the attention of the caseworker or other person preparing his report so he can correct it. Cf. Robinson v. United States Board of Parole, 403 F Supp 638 (W.D.N.Y. 1975); Kohlman v. Norton, 380 F Supp 1073, 1075 (D. Conn. 1974) (Both of those dealt with erroneous information in parole file and required new hearings because of it.

However, it the Spring of 1976 Congress enacted into law the "Parole Commission andReorganization Act." 18 USC s/s/4201 et seq. (90 Stat. 219, Pub. L. 94-233). Under this new Act are many rights which represent, for the most part, a codification of many federal court decisions. For example, See Title 18 United States Code Section 4208. n) you are not entitled, under the Act, to have access to diagnostic opinion which, if made known to you, could lead to a serious disruption of the prison program, any document which reveals sources of information obtained upon a promise of confidentiality; or any other information which, if disclosed, might result in harm, physical or otherwise, to any person. If the Commission or the Bureau of Prisons denies you access to any type of information listed above, however, it must at least provide you with a summary of the basic contents of the material withheld and furnish you with a copy of the summaries before your parole hearing, p) a full and complete record of every proceeding must be kept by the Commission and upon request the Commission must make this record available to you; and q) if you are denied parole a conference is set up between you and the Commission, or the examiners thereof, to explain the reasons why you were denied. This conference include advice to you as to what steps you might take to enhance your chances of making parole at your next hearing, 18 USC 4208. Unlike the Federal Parole System the State of North Carolina Parole System does not provide caseworkers but instead, case analysts. Prior to submission of pregress reports to the North Carolina Parole Board in the State prison system, the poor prisoner is not shown reports based upon information contained in his central file. He is not given the opportunity to read and agree with the contents thereo

If there be mistakes or erroneous information in his parole file he cannot call it to the attention of the case analyst or other person preparing his report so he can correct it. He is not provided with a summary withheld, or furnished with a copy of the summaries before his parole hearing. Cf. 18 USC 4208. There is no available remedy to request a full and complete record of every proceeding and the North Carolina Parole Board does not make these available to its prisoners. If you are denied parole no conference is setup between you and the Parole Board, or the examiners thereof, to explain the reason why you were denied and no one tell you what steps you might take to enhance your chances of making parole at your next hearing. Infact, the prisoner is not examined.

STATES WHICH HAVE CREATED THE RIGHTS TO CONSIDERATION OF PAROLE MAY NOT DENY THE PRISONER ACCESS TO INFORMATION IN HIS PAROLE FILE BECAUSE THE PRISONER'S INTEREST IS TO HELP HIMSELF PREPARE FOR CONSIDERATION OF PAROLE OR CONTENTION THAT RELATES TO CONSIDERATION OR THE APPLICATION OF FAIRNESS.

Furnishing uncovered facts, documents and relevant information about his parole status that will help him present a complete picture to the board. It would aid the Parole Board to narrow and clarify the issue whether to grant or to deny parole, and be accurate rather than inaccurate, and to discover pertinent facts in making a discriminatory decision as well as an impartial one. Access would substantially lessen, if not, eliminate, much of the element of surpise which no doubt, would turn out long drawn grievances by redressing out courts while simultaneously increasing our prisons' population presumeably on a national scale. Besides it cannot be said with precision that the request for information in a parole file is irrelevant or unreasonble. One of the big advantages of access to information in his parole files is that it allows the parole board to avoid rehearings where remain a possibility that adverse collateral consequences would inure to the board by a court decreeing hearings. This therefore would minimize

attempts of prisoners and ease court actions. Furnishing access effectivaly will let the prisoner know, let alone understand, why parole is denied him and hence what changes in attitudes, habits, and the like will be required if he is ever to be successful in obtaining parole. For example, in Calabro v. United Board of Parole, 525 F2d 660 (Ga5 1975), the court held that factual errors in the parole file are not prejudicial where the prisoner had provided the parole board with his own statement of the factual data at the parole hearing. Manos v. United States Board of Parole, 399 F Supp 1103 (M.D.Pa. 1975), held that if the parole board takes the offense for which the prisoner is in prison into consideration, e. g., if they designate him as an "organized crime" person , he must be informed of this in order to be prepared to refute any erroneous information. And, in Fisher v. United States, 382 F Supp 241 (D. Conn. 1974) , the court held that a prisoner was not entitled to full access to his file although the baord must disclose to the prisoner those adverse facts that detail the ground for the board's discretional decision to deny parole, See also, Rathman v. Director, United States Board of Parole, 403 F Supp 188 (N. D. Ga. 1975).

ACCESS TO INFORMATION IN HIS PAROLE FILE CANNOT BE CONSIDERED OPPRESSIVE OR OBJECTIONABLE SIMPLY BECAUSE THIS MAY CAUSE THE PAROLE BOARD WORK, RESEARCH OR EXPENSE. NOR IS ACCESS OBJECTIONABLE BECAUSE HE SEEK INFORMATION GUARANTEED TO HIM A REVIEW AND CONSIDERATION OF HIS OWN CASE UPON ITS MERITS.

Executive privilege is disproportionate and unreasonable justifications for denying the prisoner access to information in his parole file when interest of both the Parole Board and the prisoner is guaranteed review and consideration fully operative by North Carolina General Statutes 148-58. Considering the probability of undue burden or expense by providing prisoners access to information in their parole files, in the absence of fairness, consideration is non-existence. When weighed against the inconvenience to the state, justifies the application of the Fourteenth Amendment. Because reports becomes part of the prisoner's personal files, affecting

numerous classification and parole decisions to be made about him. Indeed, it may follow him throughout prison system. The board holds the key to the lock of the prison. It possesses the power to grant or to deny conditional liberty. The result of the board's exercise of its discretion is that an applicant suffers a grievous loss or gains a conditional liberty. If the board's decision were based on an erroneous description of the conduct underlying an offense as in Kohlan v. Norton, 380 F Supp 1073 (D. Conn. 1974); or on the basis of an illegal disciplinary proceeding as in Leonard v. Missippi Parole Board, 373 F Supp 699 (N.D. Miss 1974) but which the prisoner is denied access to information in his file and, an opportunity to rebut evidence erroneous. He is denied parole anew each time his record is used against him. See Bradford v. Weinstein, 519 F2d 728 (4th Cir. 1974), vacated as moot, 423 US 147 (1975) that must be preceeded by due process Scott v. Kentucky Parole Board, 197 S Ct 342 (1976).

North Carolina Parole Criteria 5 NC AC 4C Policy, Review and Investigation .1606.

The commission, however, does reserve the right to review disciplinary actions and put its own evaluation on the seriousness of the infraction as this relates to parole consideration.

CONCLUSION

Petitioner, Daniel Ross, submits that the Franklin v. Shields' case unlike the Ross v. Byrd's case, while somewhat analogus, is inapposite, but in any event, an important question of Federal Law which has not been, but should be, settled by this Court since in conflict with the decision of the Second, Seventh, Eighth and D. C. Circuit Court of Appeals. Accordingly, this Honorable Court Ex Mero Motu, should so declare, and decide the important federal question.

Respectfully submitted,

DANIEL ROSS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing PETITION FOR WRITS OF CERTIORARI was deposited in the United States Mail postage prepaid, addressed to Honorable Rufus L. Edmisten, Attorney General for the State of North Carolina and Honorable Jacob L. Safron, Special Deputy Attorney General Department of Justice Post Office Box 629 Raleigh, North Carolina 27602.

DANIEL ROSS, Pro se

RECEIVED
NOV 8 - 1978
OFFICE OF THE CLERK
SUPREME COURT, U.S.

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 78-6449

(Formerly Misc. No. 78-8296)

Daniel Ross,

Appellant,

v.

Kaye Byrd, individually and in her person and official capacity as Case Analyst of the State of North Carolina Parole Commission; James C. Woodard, individually and in his person and official capacity as Chairman of the State of North Carolina Parole Commission,

Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. F. T. Dupree, Jr., District Judge.

Submitted: September 21, 1978 Decided: October 16, 1978

Before FIELD, Senior Circuit Judge, WIDENER and HALL, Circuit Judges.

(Daniel Ross, Appellant Pro Se; Richard N. League, Assistant Attorney General, counsel for the Appellees.)

PER CURIAM:

A review of the record and of the district court's opinion discloses that this appeal from the order of the district court denying relief under 42 U.S.C. § 1983 is without merit. Accordingly, although leave to proceed in forma pauperis is granted, the order is affirmed for the reasons stated by the district court. Ross v. Byrd, No. 78-317-CRT (E.D.N.C., July 7, 1978).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

FILED
JUL 7 1978
JOHN R. WHITTY, CLERK
U. S. DISTRICT COURT
E. DIST. NO. CAR.

DANIEL ROSS,

Plaintiff

VS.

KAYE BYRD, etc., THE STATE OF NORTH CAROLINA PAROLE COMMISSION, etc., et al.,

Defendants

NO. 78-317-CRT

O R D E R

Plaintiff in this civil rights action desires access to the information in his parole file, asserting that some of the facts found therein are erroneous. An en banc Fourth Circuit having held that there is no constitutional right to such information, Franklin v. Shields, ___ F.2d ____ (1978), the complaint fails to state a claim.

Accordingly, the motion to proceed in forma pauperis is allowed but the action is dismissed.

/s/ F. T. Dupree, Jr.

F. T. DUPREE, JR.
UNITED STATES DISTRICT JUDGE

July 6, 1978.

A True Copy, Test:
John R. Whitty, Clerk
By Dawn S. Williams
Deputy Clerk

Supreme Court, U. S.
FILED
JAN 18 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

NO. 78-5693

DANIEL ROSS,

Petitioner

v.

KAYE BYRD, et al.,

Respondent

RESPONDENT'S BRIEF

RUFUS L. EDMISTEN
Attorney General

Ben G. Irons, II
Assistant Attorney General

N. C. Department of Justice
P. O. Box 629
Raleigh, North Carolina 27602

Telephone: (919) 733-7188

INDEX

OPINION BELOW ---------- 1

JURISDICTION ---------- 1

QUESTIONS PRESENTED ---------- 1

CONSTITUTIONAL PROVISIONS ---------- 1

STATEMENT OF THE CASE AND FACTS ---------- 1

ARGUMENTS:

I. THIS CASE IS NOT RIPE FOR DISCRETIONARY REVIEW BY THIS COURT. ---------- 3

II. THE DUE PROCESS CLAUSE DOES NOT APPLY TO DECISIONS TO GRANT OR DENY PAROLE IN NORTH CAROLINA. ---------- 4

III. ROSS IS NOT ENTITLED TO INSPECT HIS FILE TO DETERMINE WHETHER IT CONTAINS ERRORS.---- 6

CONCLUSION ---------- 8

TABLE OF CASES

BILLITERI v. UNITED STATES BOARD OF PAROLES, 541 F.2d 938 (2nd Cir. 1976) ---------- 6

BROWN v. LUNDGREN, 528 F.2d 1050 (5th Cir.) cert. den., 429 U.S. 917 (1976) ---------- 5

CHILDS v. UNITED STATES BOARD OF PAROLES, 511 F.2d 1270 (D.C.Cir. 1974) ---------- 6

DORADO v. KERR, 452 F.2d 892 (9th Cir. 1972) ---------- 6

FOUR CERTAIN UNNAMED INMATES v. HALL, 550 F.2d 1291 (1st Cir. 1977) ---------- 5

FRANKLIN v. SHIELDS, 569 F.2d 784, 800 (4th Cir. 1978)(en banc) ---------- 2, 6

FRONCZAK v. WARDEN, 431 F.Supp. 981 aff'd 553 F.2d 1219 (10th Cir. 1977) ---------- 6

INMATES OF NEBRASKA PENAL AND CORRECTIONAL COMPLEX v. GREENHOLTZ, 576 F.2d 1274 (8th Cir.) cert. granted, ____U.S._____ (October 2, 1978) ---------- 6

LAIRD v. TATUM, 408 U.S. 1, 13 (1972 ---------- 3

LOMBARDO v. MEACHUM, 548 F.2d 13, 16 (1st Cir. 1977) ---------- 5

MEACHUM v. FANO, 427 U.S. 215 (1976) ---------- 4

MONTAYNE v. HAYMES, 427 U.S. 237 (1976) ---------- 4

O'SHEA v. LITTLETON, 411 U.S. 488, 494 (1974) ------- 3

SCOTT v. KENTUCKY PAROLE BOARD, No. 78-1899 (6th Cir.) vacated and remanded to consider mootness, 429 U.S. 60 (1976) ---------- 5

SITES v. McKENZIE, 423 F.Supp. 1190, 1196 (N.D.W.Va. 1976) ---------- 7

TARLETON v. UNITED STATES, 430 F.2d 1351 (5th Cir. 1970) ---------- 6

UNITED STATES ex rel. JOHNSON v. CHAIRMAN NEW YORK STATE BOARD OF PAROLES, 500 F.2d 925 (2nd Cir.) vacated as moot, 419 U.S. 1015 (1974) ---------- 6

UNITED STATES ex rel. RICHERSON v. WOLFF, 525 F.2d 797 (7th Cir.) cert. den., 425 U.S. 914 (1976) ---------- 6

WILLIAMS v. WARD, 556 F.2d 1143, 1160 (2nd Cir. 1976) ---------- 6

STATUTES AND REGULATIONS INVOLVED

N.C.G.S. 15A-1371 ---------- 4, 5
N.C.G.S. 143B-261.1 ---------- 2
N.C.G.S. 148-58 ---------- 3, 4, 5
N.C.G.S. 148-60 ---------- 4, 5

28 U.S.C. § 1343 ---------- 1

IN THE

SUPREME COURT OF THE UNITED STATES

NO. 78-5693

DANIEL ROSS,

Petitioner

v.

KAYE BYRD, et al.,

Respondents

RESPONSE TO PETITION FOR WRIT OF CERTIORARI
TO REVIEW A DECISION OF THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

CITATIONS TO OPINION BELOW

The opinions of the United States Court of Appeals for the Fourth Circuit and the United States District Court for the Eastern District of North Carolina are unreported. Both opinions are attached to this Brief at pp. 10-12.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1343.

QUESTIONS PRESENTED

I. WHETHER THIS CASE IS RIPE FOR DISCRETIONARY REVIEW BY THIS COURT?

II. WHETHER THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION IS APPLICABLE TO DECISIONS TO GRANT OR DENY PAROLE IN NORTH CAROLINA?

III. WHETHER ROSS IS ENTITLED TO INSPECT HIS PRISON FILE IN ORDER TO ASSURE THAT IT CONTAINS NO ERRONEOUS INFORMATION?

CONSTITUTIONAL PROVISIONS

Petitioner's allegations raise questions involving the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE AND FACTS

Daniel Ross, a state court prisoner in the custody of the North Carolina Department of Correction, brought this Civil Rights Action against the North Carolina Parole Commission and one of its Case Analysts in the United States District Court for the Eastern District of North Carolina. He alleged that he had been denied parole without due process. Specifically, he claimed that he had not been allowed to inspect his prison file. The file of course, contained data that the Parole Commission considered in making its decision to deny parole to Ross. Ross does not allege that any particular information contained in his file is or might be incorrect. Instead, he claims an unlimited right to inspect the file and implies that the Commission's failure to permit inspection shows its bad faith. The District Court, relying on Franklin v. Shields, 569 F.2d 784, 800 (4th Cir. 1978) (en banc)[1] concluded that the complaint failed to state a claim and issued an order of dismissal. The United States Court of Appeals for the Fourth Circuit summarily affirmed "for the reasons stated by the District Court."[2] Ross then petitioned this Court for discretionary review.

INTRODUCTORY STATEMENT

Before responding to the legal issues raised by Ross' Petition, we feel compelled to briefly reply to his indictment of the parole process in North Carolina. From his petition, one might conclude that he and others similarly situated have no knowledge of parole criteria or the reasons for parole denial. Actually, the North Carolina Parole Commission's investigative process is a very thorough one. The Commission's procedures for investigating cases for parole have been codified and filed with the Office of the North Carolina Attorney General in accordance with N.C.G.S. 143B-261.1. Eighty-one pages of this Publication involve the Commission's review and investigation of parole cases. See 5 NCAC 4C and 5 NCAC 4D. Each prisoner is fully apprised of the Commission's expectations in plain English. The attached

---

1. In Franklin, the Fourth Circuit had held that although the Due Process Clause attaches to decisions involving parole, the requirements of the Clause are met if the prisoner is furnished a statement of the reasons for the Commission's decision. The Court specifically noted that the prisoner had no right of access to his prison file. See Franklin v. Shields, supra at 800.

2. See pp. 11-12 , infra.

pages from the Inmate Handbook distributed to each inmate vividly illustrate this point.[3] Ross cannot complain that he was not aware of what will be expected of him.

ARGUMENT

I. THIS CASE IS NOT RIPE FOR DISCRETIONARY REVIEW BY THIS COURT.

Ross' contention that his case has not been investigated for parole is true. His contentions in his petition however, fail to point out that he is not eligible for parole until 1981.[4] The attached commitment indicates that Ross was committed to the Department of Correction on March 20, 1969 for first degree murder. He received a life sentence and was later awarded 90 days credit for time spent in confinement prior to trial. At the time of Ross' commitment, North Carolina's Parole Eligibility Statute, N.C.G.S. 148-58, provided that "any prisoner serving sentence for life shall be eligible for parole consideration when he has served 10 years of his sentence." Under N.C.G.S. 148-58, Ross would have been eligible for parole on or about November 30, 1978. On July 25, 1975, however, he escaped from one of the State's minimum security institutions and was not recaptured until September 29, 1977.[5] The escape of course, delayed Ross' eligibility for parole until February, 1981. It is well established that "to entitle a private individual to invoke judicial power to determine the validity of executive or legislative action, he must show that he has sustained or is immediately in danger of sustaining a direct injury as a result of that action." Laird v. Tatum, 408 U.S. 1, 13 (1972) citing Ex Parte Levitt, 302 U.S. 633 (1937). See also O'Shea v. Littleton, 411 U.S. 488, 494 (1974). Obviously, Ross can show no injury. He has no standing and this case is not ripe for review.

---

3. See pp.13-14 infra.

4. See pp.15-16 infra.

5. See Affidavit of James C. Woodard at pp.17-18.

II. THE DUE PROCESS CLAUSE DOES NOT APPLY TO DECISIONS TO GRANT OR DENY PAROLE IN NORTH CAROLINA.

The procedural question raised by Ross is similar to that already before the Court in Inmates of Nebraska Penal Complex v. Greenholtz, No. 78-201. His claim is that North Carolina Statutes entitle him to procedural due process. N.C.G.S. 148-58, the Statute applicable to Ross, provides that:

> All prisoners shall be eligible to have their cases considered for parole when they have served a fourth of their sentence, if their sentence is determinate, a fourth of their minimum sentence, if their sentence is indeterminate; provided that any prisoner serving sentence for life shall be eligible for such consideration when he has served 10 years of his sentence. Nothing in this Section shall be construed as making mandatory the release of any prisoner on parole, but shall be construed as only guaranteeing to every prisoner a review and consideration of his case on the merits.

We do not believe that this Statute creates any liberty or property interest. It specifically provides that "nothing in this Section shall be construed as making mandatory the release of any prisoner." In G.S. 148-60, the North Carolina General Assembly added that "the time of releasing prisoners shall be discretionary." In Meachum v. Fano, 427 U.S. 215 (1976) and its companion case Montayne v. Haymes, 427 U.S. 237 (1976), this Court held that the Due Process Clause does not apply to a prisoner's transfer

> "absent some right or justifiable expectation rooted in state law that he will not be transferred except for misbehavior or upon the occurrence of other specified events." Montayne, supra at 242.

---

6. N.C.G.S. 148-58 has been amended. However, North Carolina's current Parole Eligibility Statute, N.C.G.S. 15A-1371 does not apply to persons sentenced before July 1, 1978. See North Carolina Session Laws 1977, c. 711 s. 39, which provides:

> "This Act shall become effective July 1, 1978 and applies to all matters addressed by its provisions without regard to when a Defendant's guilt was established or when judgment was entered against him except that the provisions of Article 85, 'parole' shall not apply to persons sentenced before July 1, 1978."

These decisions make it clear to us that for a right to be conferred, the Statute must limit the exercise of administrative discretion. See Lombardo v. Meachum, 548 F.2d 13, 16 (1st Cir. 1977), Four Certain Unnamed Inmates v. Hall, 550 F.2d 1291 (1st Cir. 1977). Neither G.S. 148-58 nor G.S. 148-60 nor any other Statute provides standards which control the exercise of the Parole Commission's discretion.[7] The Statutes are general directives that do not confer any rights. A "right to be considered" is no right at all.

We concede that our analysis of this question has not been universally accepted. The Circuit Courts have analyzed a variety of Parole Eligibility Statutes in a variety of ways.[8] Some Courts agree with us that the Clause does not apply to parole proceedings. Other Circuits have held the Clause applicable, but express differing views on the question of procedures that must be employed in order to meet the requirements of the Clause. Some have held that a statement of reasons for the action taken is sufficient to comply with the Clause.[9] Two Circuits require formal hearings in which the inmate is allowed to appear and "rebut" information that might be adverse to him.[10] All of these inconsistencies however, will be resolved by this Court when it reaches its decision on the merits in Greenholtz. Therefore, it would appear unnecessary for the Court to review this case.

---

7. It is interesting to note that North Carolina's current Parole Eligibility Statutes, G.S. 15A-1371 et seq., also allow the Commission total discretion.

8. Brown v. Lundgren, 528 F.2d 1050 (5th Cir.) cert. den., 429 U.S. 917 (1976); Scott v. Kentucky Parole Board, No. 74-1899 (6th Cir.) vacated and remanded to consider mootness, 429 U.S. 60 (1976).

9. See n.9 on page 6.

10. See n.10 on page 6.

III. ROSS IS NOT ENTITLED TO INSPECT HIS FILE TO DETERMINE WHETHER IT CONTAINS ERRORS.

The Court should note that despite the conflicting viewpoints with respect to the applicability of due process to parole decision making above, there does seem to be uniform agreement that the Due Process Clause does not entitle prison inmates to wholesale access to their prison files. Most Circuits that have decided the access question have determined that prisoners are entitled to no access. Franklin v. Shields, supra; Fronczak v. Warden, 431 F.Supp. 981, aff'd 553 F.2d 1219 (10th Cir. 1977); Tarleton v. United States, 430 F.2d 1351 (5th Cir. 1970). This rule applies even after parole has been denied. See e.g., Billiteri v. U.S. Board of Paroles, 541 F.2d 938 (2nd Cir. 1976). Further, the fact that a right of access might enhance the efficiency and accuracy of prison and parole decision making does not create a constitutional privilege in the prisoner to review his records. Dorado v. Kerr, 452 F.2d 892 (9th Cir. 1972). It is true that a few Courts have indicated that if a prisoner can demonstrate a particularized need for certain information, access might be allowed. One Court for example, indicated that:

> There may be some circumstances where an inmate plausibly contends that the only way he can demonstrate reliance on an impermissible fact or can show a particular allegation concerning his record to be false, is by obtaining access to detailed evidence in his file, albeit in redacted form.
>
> We are not required to express an opinion how such a case should be decided, since we do not have that situation here. There is no showing that Williams suffered any prejudice from the lack of access to his files. Williams v. Ward, 556 F.2d 1143, 1160 (2nd Cir. 1976).

---

9. (n.9 cont'd from p. 5) See Franklin v. Shields, supra; U.S. ex rel. Johnson v. Chairman New York State Board of Paroles, 500 F.2d 925 (2nd Cir.) vacated as moot, 419 U.S. 1015 (1974); U.S. ex rel. Richerson v. Wolff, 525 F.2d 797 (7th Cir.) cert. den., 425 U.S. 914 (1976).

10. (n.10 cont'd from p.5)

See Childs v. U.S. Board of Parole, 511 F.2d 1270 (D.C.Cir. 1974); Inmates of Nebraska Penal and Correctional Complex v. Greenholtz, 576 F.2d 1274 (8th Cir.) cert. granted, _____U.S._____(October 2, 1978).

In no case that we are able to discover has a Court ordered a correctional agency to allow an inmate to go on a fishing expedition through his file in the hope that he may find some mistake in it. Ross' specific claim then, raises no substantial constitutional questions.

Moreover, allwoing access to prison files would be burdensome and would undermine efforts to maintain security and promote rehabilitation of prisoners. North Carolina maintains a Central Prison File on the prison records of more than 15,000 prisoners who are housed in more than 80 separate locations. The logistics of permitting inmates to examine their prison jackets would present an overwhelming problem. More important, the opening of iles to prisoners would violate the confidentiality of sources important in the development of background information on prospective parolees. See Sites v. McKenzie, 423 F.Supp. 1190, 1196 (N.D.W.Va. 1976). Other factors which must be considered include the following:

(1) Danger to third persons if their identity accidentally became known to an inmate reviewing his file.

(2) The potential harm in making available the contents of psychiatric and psychological evaluations.

(3) The discouraging effect on frank expression of opinion by persons who must comment on the inmates rehabilitative progress.

(4) The detrimental psychological effect upon the inmate of negative reports.

(5) The possibility of inadvertent release of the names of confidential sources in official crime reports.

Finally, this Court knows but too well that unlimited access would inundate the District Courts with time consuming frivolous prisoners' lawsuits alleging errors and irregularities in their files and seeking orders to correct these "errors."

CONCLUSION

For all these reasons, Ross' contentions are without merit and his Petition for Discretionary Review should be denied.

Respectfully submitted,

RUFUS L. EDMISTEN
Attorney General

Ben G. Irons, II
Assistant Attorney General

N. C. Department of Justice
P. O. Box 629
Raleigh, North Carolina 27602

Telephone: (919) 733-7188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Response to Petition for Writ of Certiorari to Review a Decision of the United States Court of Appeals for the Fourth Circuit has been mailed, Postage Prepaid, to the following: Mr. Daniel Ross, P. O. Box 155, Bunn, North Carolina 27508.

This the 15th day of January, 1979.

Ben G. Irons, II
Assistant Attorney General

FILED

JUL 7 1978

JOHN R. WHITTY, CLERK
U. S. DISTRICT COURT
E. DIST. NO. CAR.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

DANIEL ROSS,

Plaintiff

VS.

KAYE BYRD, etc., THE STATE OF NORTH CAROLINA PAROLE COMMISSION, etc., et al.,

Defendants

NO. 78-317-CRT

O R D E R

186

Plaintiff in this civil rights action desires access to the information in his parole file, asserting that some of the facts found therein are erroneous. An en banc Fourth Circuit having held that there is no constitutional right to such information, Franklin v. Shields, ___ F.2d ____ (1978), the complaint fails to state a claim.

Accordingly, the motion to proceed in forma pauperis is allowed but the action is dismissed.

F. T. DUPREE, JR.
UNITED STATES DISTRICT JUDGE

July 6, 1978.

A True Copy, Teste:
John R. Whitty, Clerk
By Dorothy W. Williams
Deputy Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 78-6449

(Formerly Misc. No. 78-8296)

Daniel Ross,

Appellant,

v.

Kaye Byrd, individually and in her person and official capacity as Case Analyst of the State of North Carolina Parole Commission; James C. Woodard, individually and in his person and official capacity as Chairman of the State of North Carolina Parole Commission,

Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. F. T. Dupree, Jr., District Judge.

Submitted: September 21, 1978 Decided: October 16, 1978

Before FIELD, Senior Circuit Judge, WIDENER and HALL, Circuit Judges.

(Daniel Ross, Appellant Pro Se; Richard N. League, Assistant Attorney General, counsel for the Appellees.)

PER CURIAM:

A review of the record and of the district court's opinion discloses that this appeal from the order of the district court denying relief under 42 U.S.C. § 1983 is without merit. Accordingly, although leave to proceed in forma pauperis is granted, the order is affirmed for the reasons stated by the district court. Ross v. Byrd, No. 78-317-CRT (E.D.N.C., July 7, 1978).

(6) The Parole Commission makes the rules and conditions an inmate must live by while on Parole and Conditional Release.

17. PAROLE ELIGIBILITY

All inmates except those that are sentenced as Committed Youthful Offenders (CYO's) and those who are sentenced to life must serve at least one-fourth of their minimum or lesser sentence in order to earn the right to be reviewed for Parole. To decide when inmates might be reviewed for Parole, the Parole Commission uses the following methods:

(1) Where the sentence is for a set time of months or years (Determinate) an inmate will be reviewed for Parole after he has served one-fourth of the total sentence. Example - An inmate serving a 10 year sentence will be reviewed for Parole after serving 2 1/2 years of the 10 year sentence (1/4 of 10 years equals 2 1/2 years).

(2) When the sentence has two parts a greater (maximum) and a lesser (minimum) part, it is called an Indeterminate Sentence. An inmate will be reviewed for Parole after he has served one-fourth of the lesser (minimum) sentence. Example - An inmate serving a sentence in which the Commitment reads "not less than 4 years nor more than 10 years" would be reviewed for Parole after serving 1 year of the minimum sentence of 4 years (1/4 of 4 years equals 1 year).

(3) When an inmate is serving two or more RYO sentences (Regular Youthful Offender) which are being served at the same time, they are called Concurrent Sentences. The inmate must serve one-fourth of the longer sentence before being reviewed for Parole. Example - An inmate serving a 4 year RYO sentence and a 6 year RYO sentence at the same time will be reviewed for Parole after serving 1 1/2 years which is one-fourth of the longer sentence of 6 years, (1/4 of 6 years equals 1 1/2 years).

(4) When an inmate is serving two or more sentences and one

is to be served after the other, they are called Consecutive Sentences. The inmate must serve one-fourth of the minimum or lesser sentences added together before he can be reviewed for Parole. Example - An inmate serving a "not less than 4 years nor more than 8 years" sentence and a "not less that 6 years nor more than 12 years" which are to be served one after the other will be reviewed for Parole after serving 2 1/2 years. This is one-fourth of the two smaller sentences (4 years and 6 years) added together; 1/4 of 10 years (4 plus 6 equals 10) equals 2 1/2 years. An inmate who is serving a life sentence for a crime which was committed before April 8, 1974, must serve 10 years before he is reviewed for Parole. An inmate who is serving a life sentence for a crime which was committed after April 8 1974, must serve 20 years before he is reviewed for Parole. Inmates who are serving life sentences that are to be served one after the other (Consecutive) must serve the minimum time required by law for each sentence.

Note: Any jail credit or other credits the inmate receives from the court will be reviewed against the time an inmate must serve before being reviewed for Parole.

Inmates who have been sentenced as Committed Youthful Offenders (CYO's) can be brought up for Conditional Release at any time after they come to prison. However, the Parole Commission may not release any inmate serving a Committed Youthful Offender Sentence without first getting a favorable recommendation from the Secretary of the Department of Correction unless the inmate has less than 90 days until his final release date. The Secretary of the Department of Correction has given this power to the Director of Prisons, who has review committees at the unit and area levels to make recommendations to the Parole Commission.

Note: Inmates who are serving both Committed Youthful Offender and Regular Youthful Offender Sentences must serve at least one-fourth of the Regular Youthful Offender Sentence before he is eligible for Conditional Release.

Note: The word "Conditional Release" is used to separate

Committed Youthful Offenders from other inmates with regular sentences. Other than this, "Conditional Release" and "Parole" are the same things, and the same conditions for release and conditions of supervision go for Committed Youthful Offenders as to other offenders.

Under North Carolina law, the Parole of prisoners is left up to the Parole Commission. There are, however, two cases in which the law gives the prisoner some claim to right of Parole:

(1) PAROLE AT ONE-THIRD: Inmates serving Misdemeanor sentences of less than 12 months who are in the custody of the Department of Correction are to be paroled at one-third of their sentence. (The Parole Commission may stop this Parole for good cause). A person so paroled is not supervised; however, if during the six months following Parole, the Parolee is charged with a new law violation and convicted, his Parole will be stopped and all of the remainder of the sentence from which he or she was Paroled must be served.

(2) NINETY-DAY PAROLE: All prisoners serving two years or more are to be given Parole 90 days before the end of their sentence unless the Parole Commission finds out the inmate's release would not be in agreement with the well being of society. The inmate's attitude, prison conduct, (how he gets along with others) and an acceptable Job and Home Plan have a great deal to do with whether or not the Commission finds that Parole in these cases will be in the best interest of the community and the inmate.

Inmates turned down on Parole in either of these two cases may request a hearing with an agent of the commission. When such hearings are held, a record is made and given to the Parole Commission for a final decision. Both Parole at One-Third and Ninety-Day Parole are handled by the Pre-Release and Aftercare Section and all questions you may have on either of these types of Parole should be mailed to that section at the Parole Commission's office in Raleigh.

18. THE PAROLE PROCESS IN BRIEF

Every inmate that comes into prison is given a number and a file jacket. All information that the inmate and the prison have in common goes into this jacket. This includes commitment papers, medical history, and reports from the Division of Prisons on conduct and activities. Also letters written to and about the inmate are placed in this file.

Before an inmate is thought about for Parole, the Parole Commission does the following things:

(a) A Parole Officer goes to the home that the inmate plans to go back to and asks questions about the inmate.

(b) A Parole Officer will talk to the Sheriff or Police Chief about the crime the inmate committed.

(c) A Parole Officer will get a clear picture of the inmate's past life. Ninety days before an inmate might be able to be released on Parole, his file is studied by an assigned Case Analyst. If the report is good, the Parole Officer goes into the town and talks to all the above mentioned people about the inmate. If the report is bad, the Case Analyst will send the case to the Parole Commission and recommend that Parole be turned down. Then a new review date must be set no more than twelve months later.

A Pre-parole investigation takes between 90 and 120 days before a decision is made by the Parole Commission. Then the inmate is told of this decision.

If there is no Pre-parole investigation, and the Case Analyst recommends that Parole not be given, three members of the Parole Commission must agree with this decision. Any one of the Commissioners can disagree with the Case Analyst. He can order the case looked into or order an earlier review date set. If Parole is not recommended, a new Parole review date is set within the next 12 months. Only a Parole Commissioner can move up this date.

In all Felony cases the Parole Commission will ask the opinions of the following people or agencies:

(a) The Judge who sentenced the inmate;

(b) The District Attorney;
(c) The Police or Sheriff's Department;
(d) Parole Officers;
(e) Staff at inmate's prison unit;
(f) The Case Analyst.

Family and people who know the family and the inmate may offer recommendations for the inmate. These recommendations will be written. They must tell why the inmate deserves Parole. These recommendations are put in the inmate's file to be read by the Commissioners.

In some cases the inmate may be called to meet with members of the Parole Commission. When an inmate knows he is to meet and talk with a member of the Parole Commission, he should have in hand his Job and Home Plan. The inmate should tell the Parole Commission what his reasons are for thinking he can make it on Parole.

Because there are so many inmates to meet and talk with, the Commission does not want visitors present. When a visitor has permission to meet with the committee for an inmate, the visitor will have only five minutes to say what he wants to say. The visitor gets permission to meet with the Parole Commission from the Case Analyst or the Office of the Parole Commission. This meeting gives the Parole Commission a chance to meet the inmate face to face. Then the inmate is able to speak for himself in private.

19. FACTORS CONSIDERED IN MAKING THE PAROLE DECISION

Parole is not a right. There are certain things that must be done before an inmate can be given Parole. The Parole Commission must by law be sure of the following things:

(1) The prisoner will (most likely) not break any laws.
(2) The prisoner is not a threat or danger to the people who live in his town or to other people in the State.
(3) The prisoner is shown (by his record) to have followed the rules of the prison.
(4) The prisoner does not want to get even with any person who arrested, sentenced, or testified against him.

(4) Custody Level. The Parole Commission does not give Parole to inmates in **Close or Maximum Custody** unless they are being kept at that level for their own protection. As a rule, inmates will not be Paroled out of **Medium Custody** (brown clothes). The Parole Commission wants the inmate to be in **Minimum Custody** so it can watch his actions and the way he handles responsibility.

(5) Escapes, Break-Outs. The Parole Commission looks at a recent escape by an inmate as a sign that he is likely to leave Parole supervision.

(6) Attitude. N. C. law says that an inmate should not hold a grudge against the people who put or kept him in prison.

(7) Work Release/Study Release. Inmates can help their chance for parole by doing well on Work Release or Study Release.

(8) Alcohol-Drug Background. An inmate who has never had an alcohol or drug problem will find themselves in good standings with the Parole Commission in this matter. Inmates who have used alcohol and/or drugs can off-set their bad influence by joining groups like AA, Drug Counseling, Mental Health Counseling, and by not using either alcohol or drugs while in prison, or away from prison on Work Release or on Home Leaves.

(9) Previous Parole and Probation. Both Probation and Parole are favors given by the State which must be repaid by the individual with responsible behavior. An inmate who has gone to prison, got out on Parole and did not mess up before the Parole ended, has a good chance of making Parole again. Someone who has lost his Parole before or messed up while on Parole would have a lesser chance of making it again. To commit a new crime while on Probation or Parole is the worst thing an inmate can do.

(10) Employment Plan. Inmates will not be granted Parole unless they have a job or have enough money to support themselves without going on welfare. The Parole Commission calls for the inmate to have a full-time job. The Parole Commission will not agree to a job in which the inmate must handle alcoholic beverages or bring the inmate close to bad people. School

Plan may be used by inmates who need more education or training.

NOTE: After an inmate has met all the conditions for Parole except for finding a job, he may be able to get a 30 day Parole in order to look for a job. These leaves will be given to inmates whose prison records are spotless and have no drug or alcohol problems.

(11) Residence Plans. The Parole Commission demands that the home in which the inmate plans to live be cooperative, stable, and moral. Without the cooperation of the home, the Parolee has a greater chance of failure.

20. NOTIFICATION OF PAROLE DENIAL

When an inmate is turned down for Parole, he will get a letter giving the reasons why he didn't get Parole. The reasons will be given in terms of the requirements for Parole and certain points in the inmate's case will be given to back-up the decision.

21. INTERSTATE PAROLE COMPACT

In some cases an inmate may be granted Parole to another State. Parole cannot be granted to another State unless there is an agreement between that State and North Carolina concerning Parole. This agreement is called the Interstate Parole Compact.

22. PAROLE SUPERVISION

Inmates on One-Third Parole will not have a Parole Officer in charge of their Paroles, but all other inmates on Parole/Conditional Release will have a Parole Officer whose job it is to make sure the inmate lives up to the rules and conditions of his Parole. Each day that an inmate is on Parole counts the same as if the inmate was serving his sentence in prison. The Parole Commission has the power to end an inmate's Parole. This means that the inmate will be released from his sentence the same as if the inmate had served the whole sentence. When an inmate serving a Felon sentence either completes his sentence or has his Parole terminated by the Parole Commission, his citizenship rights will be returned to him.

The two reasons why parole is most often turned down are: (1) The Parole Commission thinks that the inmate will most likely break another law. (2) The inmate's record in prison shows that he did not follow the rules while in prison.

An inmate who has been in prison more than one time, on probation, or arrested and convicted, will most likely not make Parole the first time he is reviewed. An inmate who has never been arrested and convicted or only has been convicted for lesser criminal acts may receive Parole as soon as he has served the least (smallest) amount of time needed by law. The way an inmate acts in prison can show the Parole Commission that he is ready for Parole. North Carolina says that the Parole Commission must be sure that the inmate has gone by all the rules and regulations while in prison. An inmate who has been locked up because of a disciplinary hearing must prove that he has changed by doing more than the rules ask of him to prove that he is able to get along in prison. Doing good in prison does not make sure of an inmate's chances of getting Paroled. However, the inmate will not get Parole if he has not done well in prison.

The following are examples which have either good or bad effects on the chances of making Parole:

(1) The type of crime and how it was committed. The Parole Commission wants to answer the question - Has the inmate served enough time on his sentence as punishment for the crime?

(2) The feelings of the officials and the people in the community. The Police Department and the people in the neighborhood are asked about the inmate and how they think that he will get along on Parole. The opinions of these people carry weight with the Commission.

(3) Medical, Psychiatric, and Psychological Reports. These reports are very useful to the Parole Commission in answering questions about fitness of the prisoner for Parole. An example: An inmate that is doing time for badly hurting someone is not a mean or hurtful person by nature and will not likely do it again. The reports also show how the inmate has grown up in his thinking and actions. These reports will not be shown to anyone else.

134 A + Print

File # 68-CR-4266

Film #

STATE OF NORTH CAROLINA

County of Wake

In The General Court of Justice

Superior Court Division

P6726, 153, 21747, 92 (2)

The State of North Carolina

vs.

Daniel Ross

Name, Age, Sex and Race of Defendant

JUDGMENT AND COMMITMENT

In open court, the defendant appeared for trial upon the charge ~~or charges~~ of Murder

and thereupon entered a plea of not guilty. Evidence was heard for the state and for the defendant including testimony of the defendant in his own behalf. The Jury, after deliberation, returned a verdict of guilty of Murder in the 1st degree with the recommendation that punishment be life imprisonment in the State Prison.

Having been found guilty of the offense of murder in the 1st degree with the recommendation that the punishment be life imprisonment in the State Prison

which is a violation of ~~the law~~ G.S. 14-17 and of the grade of felony

It is ADJUDGED that the defendant be imprisoned for the term of the remainder of his natural life in the State Prison to be assigned to work under the supervision of the North Carolina Department of Correction.

Rec'd 1 env w/2 Bes 3-20-69

It is ORDERED that the Clerk deliver two certified copies of this judgment and Commitment to the Sheriff or other qualified officer and that said officer cause the defendant to be delivered, with such copies as commitment authority, to the appropriate official of the State Department of Correction.

This 19th day of March , 19 69.

Leo Carr

Presiding Judge

Attorney for Defendant: William W. Merriman

Attorney for the State: W. G. Ransdell, Jr.

Date certified copies of judgment delivered to Sheriff for commitment: 10-29-1969 mailed

AOC-L FORM 183

APPEAL ENTRIES

In apt time, the defendant objects and excepts to the rulings udgment of th t and notice of appeal to the North Caroli eme Court

Further notice waived.

The defendant is allowed 60 prepare and serv on appeal, and the Sta owed 30 days after such service to prep rve counterc

Appearance bond is fixed in the sum ance

Appeal bond is set at $

This 19th day of March

Presiding Judge

10/28/1969 CERTIFICATE OF OPINION AND JUDGMEN ceived from N.C. SUPREME COURT endorsed "NO ERROR". Commitment issued a ailed to N.C.D.C.

CERTIFICATION TO DEPARTMENT OF CORR ON

I certify that this document is a true and complete copy of the origi dgment and Commitment in the case named, now on file in this office, and that this copy is certified to North Carolina State Department of Correction, as in said judgment directed, as authority for the tion of the prison sentence therein imposed.

Witness my hand and the seal of the Superior Court.

This 29 day of October , 19 69

Deputy Cler he Superior Court

IN THE SUPREME COURT OF THE

UNITED STATES

NO. 78-5693

DANIEL ROSS, Petitioner v. KAYE BYRD, et al., Respondents	)	AFFIDAVIT

I, James C. Woodard, first being sworn, depose and say:

That I am the Chairman of the North Carolina Parole Commission and my offices are located in Raleigh.

Daniel Ross began serving a life sentence on March 26, 1969, having been convicted of murder in the first degree in the Superior Court of Wake County. Under the Statutes in effect at the time of Daniel Ross' conviction, N.C.G.S. § 148-58, a person serving a life sentence became eligible for parole after serving 10 years of the sentence. This Statute has been applied to Daniel Ross to determine his parole eligibility date.

As noted herein, Daniel Ross began serving his sentence on March 26, 1969 and after serving six years and four months of his sentence he escaped from the facilities of the Department of Correction. Daniel Ross was returned to the authority of the Department of Correction on September 29, 1977 after having been out on escape for approximately two years and two months. Daniel Ross has served one year and three months since having been returned to the Department of Correction in September, 1977. The two years and two months that Daniel Ross was out on escape does not count towards his parole eligibility date, and therefore his parole eligibility date has been set forward to February 10, 1981.

Daniel Ross' case has never been considered by the Parole Commission because he has failed to serve a sufficient amount of time on his life sentence to be eligible for parole consideration, however, Daniel Ross will be promptly considered for parole as soon as he is eligible and the parole review process will begin in December, 1980.

This the 11th day of January, 1979.

James C. Woodard
Affiant

Sworn to and subscribed before me this the 11th day of January, 1979.

Ella E. Allen
Notary Public

My Commission Expires: My Commission Expires December 5, 1979

RECEIVED
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE
UNITED STATES
NO. 78-5693

DANIEL ROSS,
Petitioner

Vs.

KAYE BYRD, et al.,
Respondents

Petition Reply Brief

AFFIDAVIT

I, Daniel Ross, first being sworn, deposes and says:

That I am an incarcerated citizen of the North Carolina Department of Correction, and housed at the Franklin County Subsidiary located in Bunn, North Carolina.

I began serving a life sentence on March 19, 1969, and not on March 26, 1969 as alleged by respondent and having been convicted of murder in the first degree in the Superior Court of Wake County. Under the Statutes in effect at the time of my conviction, N.C.G.S. 148-58, a person serving a life sentence became eligible for parole after serving a life sentence upon completion of 10 years of the sentence. This Statute has been applied to me to determine my parole eligibility date.

It should be noted that I am North Carolina most indefatible jailhouse lawyer and labeled as such, I am classified as two characters. One being a Special Offender while the other being is that I am impulsive and unpredictable individual and also is under privileged.

With regard and/or responding to respondent's unsubstantiated fabricated accusation to wit escape. I specifically testifies and testifies with truth, that at no time have I been indicted, tried, convicted or given a sentence for escape in the North Carolina courts or courts of the United States, or in any other court of competent jurisdiction whereof I shall have been duly convicted shall exist in the country.

Since February 1, 1978, I have filed sixteen litigations in the United States District Court for the Eastern District of North Carolina. All except one were filed against the North Carolina Prison Administration. See Roster Nos. 1346; 1376; 1392; 1390; 1396; 1460; 1466; 1474; 1476; 1480; 1492; 1500; 1570; 1576; 1582. My most recent litigations entitled Daniel Ross, et al. vs. James C. Woodard, et al., No. 78-0535-CRT (E.D.N.C.) and Daniel Ross, et al., vs. James B. Hunt, Jr., et al., No. 78-56-CRT (E.D.N.C.) (pending). One involves overcrowding, the other involves racial discrimination in which the United States Department of Justice is contemplating on intervening. I am also a witness against the North Carolina high ranking prison officials George D. Boone, Assistant Superintendent and Fredrick Rehnor, Captain, who were indicted for murder of Inmate Glenn Earl Pitt, and presently pending trial in the Superior Court Halifax, North Carolina. I am also responsible for the presentation of the cases entitled Everrett v. Stephenson, C-75-509-G-HC (M.D.N.C. 1977) (appeal pending) No. 78-6059 and Cole v. Stephenson,__F__Supp. No. 77-0351 (E.D. N.C. 1978) (appeal pending) in the United States Court of Appeals for the Fourth Circuit in Richmond, Virginia. These two cases could effect some of the approximately 1, 400 prisoners convicted of murder prior to 1975. On my own without the assistance of an attorney I won my case in the United States Court of Appeals in a landmark decision by the late Judge Sobeloff who held that inmates who did not eat pork for religious reasons were entitled to meals providing basis nutrition without pork. See Ross v. Blackledge, 477 F.2d 616 (4th Cir. 1973).

As a result of my long advocacy in prison reform and as a jailhouse lawyer and prison civil rights activist, it is apparent that I am being charged with escape which is a violation of N.C.G.S. 148-45, and is given an extended and/or a new prison sentence without a trial by a jury and a judge of a criminal court of competent jurisdiction.

The North Carolina Parole Commission uses sixteen criteria in evaluating inmates for parole. These criteria according to respondent's paperwriting have been submitted to this Honorable Court for its review and consideration.

According to the Central Head Quarters Records, my parole eligibility date was November 30, 1978, and by respondent's own admission Ross' contention that his case has not been investigated for parole is true.

Yes, I have not been given a formal parole review within 90 days on the same basis as other inmates as guaranteed by N. C. G.S. 148-58 mandating this consideration. The fact that the respondent admits that the Parole Commission in exercising its discretion decided to not answered the question of whether or not the time served has represented sufficient punishment for my crime though specifically an authorized action, should be as is - was an arbitrary or capricious exercise of judgment by respondent.

Until respondent submitted its brief into this Honorable Court and dated January 11, 1979, I was not informed that the mistake or erroneous (escape) information was what delayed my eligibility for parole until February, 1981, and that my letters regarding my eligibility status and those are offered in support of my testimony informed my eligibility to be November 30,1978.

Throughout my approximately eleven years of confinement as North Carolina number one jailhouse lawyer I have not ever recalled the first instance whereas the interpretation of N.C.G.S. 148-58, which relates to parole- was used in a jailhouse lawyer, a prison civil rights activist, a lifer or other prisoner in general.

It therefore is my belief that since North Carolina Prison has the highest rate of prison commitment than any other State in the Union that she will go to ultra extreme to attemp dishonor to hoodwink, deceive and persuade this Honorable Court in not deciding my case.

I believe that if I had been allowed access to information in my parole file prior to submission of my progress report to the Parole Commission that I could possibly called the escape mistake or erroneous information to have been corrected.

Infact, in March, 1978, the North Carolina Parole Commission's Chairman who is the same Affiant in this case in the case entitled Daniel Ross, et al. vs. James B. Hunt, Jr., et al., No. 78-56-CRT (E.D.NC.) in his Affidavit testified that Ross was scheduled to be reviewed for parole on August 31, 1978; that was 90 days prior to my parole eligibility date which was November 30,1978. See Ross, et al. vs. Hunt, et al., No. 78-56-CRT (E.D.N.C.) pending.

Its strange and questionable since the subject matter has reached this Honorable Court that the question of eligibility passed both the United States District Court for the Eastern District of North Carolina and the United States Court of Appeals without having been raised and passed upon and for the first time, respondent is attempting to raise in this Honorable Court.

I specifically tesfies that my parole eligibility date was November 30, 1978. (See Exhibits A, B, C, D, E, and F attached).

This the 12th day of January, 1979.

Affiant

Subscribed and Sworn to before me on 12th day of January, 1979

Notary Public

My Commission Expires

Supreme Court, U. S.
FILED
JAN 31 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

NO. 78-5693

DANIEL ROSS,

Petitioner

vs.

KAYE BYRD, et al.,

Respondent

PETITIONER'S COUNTER BRIEF

[illegible], pro se
Franklin County
Post Office 155
Bunn, North Carolina 27508

INDEX

OPINION BELOW ---------- 1

JURISDICTION ---------- 1

QUESTIONS PRESENTED ---------- 1

CONSTITUTIONAL PROVISIONS ---------- 1

STATEMENT OF THE CASE AND FACTS ---------- 1

ARGUMENTS:

I. THIS CASE IS RIPE FOR DISCRETIONARY REVIEW BY THIS COURT. ---------- 3

II. THE DUE PROCESS CLAUSE DOES APPLY TO DECISIONS TO GRANT OR DENY PAROLE IN NORTH CAROLINA. ---------- 6

III. ROSS IS ENTITLED TO INSPECT HIS FILE TO DETERMINE WHETHER IT CONTAINS ERRORS. ---------- 10

CONCLUSION ---------- 14

TABLE OF CASES

HANKERSON v. NORTH CAROLINA, 432 U.S. 233 (1977) ---------- 2,4

ROSS v. BYRD, NO. 78-317-CRT (E.D.N.C., July 7, 1978) ---------- 3,

ROSS v. BYRD, NO. 78-6449 (formerly Misc. No. 78-6296)(4th Cir. 1978) ---------- 3

LAIRD v. TATUM, 408 U.S. 1, 13 (1972) ---------- 3,4,8

INMATES OF NEBRASKA PENAL AND CORRECTIONAL COMPLEX v. GREENHOLTZ, 576 F.2d 1274 (8th Cir.) cert. granted, __U.S.__(October 2, 1978) ---------- 3,9,10

SHAPRIO v. THOMPSON, 394 U.S.618, 633 (1969) ---------- 3

MAZER v. STEIN, 347 U.S. 201, 206 n.5 (1954) ---------- 3

OSHEA v. LITTLETON, 411 U.S. 488, 494 (1974) ---------- 4

STATE v. SHOEMAKER, 273 N.C. 475, 160 S.E. 281 (1968) ---------- 5

PATTERSON v. NEW YORK, 432 U.S. at 227 (1977) ---------- 5

COLTEN v. KENTUCKY, 407 U.S. 104, 110, 92 S.Ct. 1953, 1957, 32 L.Ed.2d 584, 589-90 (1972) ---------- 6

LOMBARDO v. MCACHUM, 548 F.2d. 13, 16 (1st. Cir. 1977) ---------- 6

FOUR CERTAIN UNNAMED INMATES v. HALL, 550 F.2d 1291 (1st. Cir. 1977) ---------- 6

GRAHAM v. RICHARDSON, 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed.2d 534 (1971); ---------- 6

MORRISSEY v. BREWER, 408 U.S. at 481, 92 S.Ct. at 2600, 33 L.Ed.2d at 494 ---------- 6

BRADFORD v. WEINSTEIN, 519 F.2d at 732 (4th Cir. 1974), vacated as moot, 423 U.S. 147, 96 S.Ct. 347, 46 L.Ed. 2d 350 (1975) ---------- 7, 12

WILLIAMS v. WARD, 556 F.2d 1143, 1157-58 (2d Cir. 1977) cert. dismissed, 434, 944, 98 S.Ct. 469, 54 Ed. 2d 323 ---------- 7

O'CONNOR v. DONALDSON, 95 S.Ct. 2494 (1975) ---------- 8

FURMAN v. GEORGIA, 408 U.S. 232, 273, 92 S.Ct. 2726, 2744, 33 L.Ed.2d 340 (1972) ---------- 8

JACKSON v. INDIANA, 406 U.S. 738, 92 S.Ct. at 1858 ---------- 8

COHEN v. CALIFORNIA, 403 U.S. 15, 24-26, 91 S.Ct. 1780, 1787-1789, 29 L.Ed.2d 284 ---------- 8

COATES v. CITY OF CINCINNATI, 402 U.S. 611, 615, 91 S.Ct. 1686, 1689, 29 L.Ed.2d 214 ---------- 8

STREET v. NEW YORK, 394 U.S. 576, 592, 89 S.Ct. 1354, 1365-1366, 22 L.Ed.2d 572 ---------- 8

U.S. DEPT. OF AGRICULTURE v. MORENO, 413 U.S. 528, 534, 93 S.Ct. 2821, 2825-26-26, 37 L.Ed.2d 782 ---------- 8

McNEIL v. DIRECTOR PATUXENT INSTITUTION, 407 US 245, 248-250, 92 S.Ct. 2083, 2086-2087, 32 L.Ed. ed 719 ------ 8

FRANKLIN v. SHIELDS, 569 F.2d 784, 789-90 (4th Cir. 1977), rev'd enbanc 569 F.2d 800 (4th Cir. 1978) ---------- 12

WOLFF v. McDONNELL, 418 U.S. 539, 94 S. Ct. 2963, 41 L.Ed.2d 935 (1974) ---------- 12

ROE v. WADE, 410 U.S. 113 (1973) ---------- 14

SITES v. McKENZIE, 423 F. Supp. 1190, 1196 (N.D.W.Va. 1976)- 14

STATUTES AND REGULATIONS INVOLVED

N.C.G.S. 15A-1371 ---------- 7,8,9,10,11

N.C.G.S. 143B-261.1 ---------- 7,8,10,11

N.C.G.S. 148-58 ---------- 7,10,11

N.C.G.S. 148-60 ---------- 7,9,10,11

NEB. REV. STAT. 83-191 ---------- 7

NEB. REV. STAT. 83-192 ---------- 7

NEB. REV. STAT. 83-1, 114 ---------- 7

NEB. REV. STAT. 83-1, 115 ---------- 7

NEB REV. STAT. 83-192(9) ---------- 7

5 U.S.C.A. 552 et seq., ---------- 11

18 U.S.C.A. 4201 et seq., ---------- 11

28 U.S.C.A. 1343 ---------- 1

IN THE

SUPREME COURT OF THE UNITED STATES

NO. 78-5693

DANIEL ROSS,

Petitioner

Vs.

KAYE BYRD, et al.,

Respondents

COUNTER
RESPONSE TO PETITION FOR WRIT OF CERTIORARI
TO REVIEW A DECISION OF THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

CITATIONS TO OPINION BELOW

Petitioner adopts respondents' citations to opinion below as if set forth in the original petition, respondents' response and this counter response.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. 1343.

QUESTIONS PRESENTED

I. WHETHER THIS CASE IS RIPE FOR DISCRETIONARY REVIEW BY THIS COURT?

II. WHETHER THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION IS APPLICABLE TO DECISIONS TO GRANT OR DENY PAROLE IN NORTH CAROLINA?

III. WHETHER ROSS IS ENTITLED TO INSPECT HIS PRISON FILE IN ORDER TO ASSURE THAT IT CONTAINS NO ERRONEOUS INFORMATION?

CONSTITUTIONAL PROVISIONS

Petitioner's allegations raise questions involving the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE AND FACTS

Except respondents' contention in their opening assertion Ross does not allege that any particular information contained in his file is or might be incorrect. The same is negated, petitioner adopts respondents' statement of the case and facts.

INTRODUCTORY STATEMENT

Respondent in its introductory statement attempts dishonor to impress this Honorable Court by asserting in an opening statement, before responding to the legal issues raised by Ross' Petition, we feel compelled to briefly reply to his indictment of the parole process in North Carolina. From his petition, one might conclude that he and others similarly situated have no knowledge of parole criteria or the reasons for parole denial. Actually, the North Carolina Parole Commission's investigative process is a very thorough one.

Responding to respondent's introductory statement this Honorable Court has had an occasion to become well familiar with the State of North Carolina in her attempts to dishonor the firm guidance of this and other courts wherein this Honorable Court in Hankerson v. North Carolina, 432 U.S. 233 (1977) stated:

> Moreover, we are not persuaded that the impact on the administration of justice in those States that utilize the sort of burden-shifting presumptions involved in this case will be as devastating as respondent asserts. If the validity of such burden-shifting presumptions was as well settled in the States that have them as respondents asserts, then it is unlikely that prior to Mullaney many defense lawyers made appropriate objections to jury instructions in corporating those presumptions. Petitioner made none here. The North Carolina Supreme Court passed on the v alidity of the instructions any way.

Un lex talionis, petitioner will not throw a stone for a stone and will suspend his opinion as matters not germane to adjudicating the gist of the petition. With this in mind in raising from a dead level of a shadow grave to a true living perpendicular on the square, it is, respectfully submitted that if actually, the North Carolina Parole Commission's investigative process is as thorough one as respondent asserts, then respondent should have no objection to furnishing information in petitioner's parole file, however opposes, hence respondent's premises non se quitur.

---

1. Petitioner's contention in the original petition is that considering the probability of undue burden or expense by providing prisoners access to information in their parole files, in the absence of fairness, consideration is non-existence.

ARGUMENT

I. THIS CASE IS RIPE FOR DISCRETIONARY REVIEW BY THIS COURT.

Respondent's contention is that this case is not ripe for discretionary review by this Court and it entitles respondent to no relief. Respondent's contention is unmeritorious for a number of procedural and substantive reasons. First, the question of petitioner's parole eligibility date was not raised and passed upon by the lower courts. See Ross v. Byrd, No.78-317-CRT (E.D.N. C., July 7, 1978) and Ross v. Byrd, No. 78-6449 (formerly Misc. No. 78-8296)(4th Cir. 1978). Neither the district court nor the circuit court has passed upon the question. Respondent has failed to assert in what manner and how respondent has sustained or is immediately in danger of sustaining a direct injury as a result of this Court's action. Laird v. Tatum, 408 U.S. 1, 13 (1972) citing Ex Parte Levitt, 302 U.S. 633 (1937). Except the procedural question raised by Ross is similar to that already before the Court in Inmates of Nebraska Penal Complex v. Greenholtz, No. 78-201. But-for a similar issue petitioner discerns no valid showing that the respondent's request is of such imperative public importance as to justify the deviation from the well settled rule of this Honorable Court and without qualms, respondent would be accomplishing such a purpose by invidious distinctions between classes of its citizens. Shaprio v. Thompson, 394 U.S. 618, 633 (1969). Because it is well settled rule of this Honorable Court that this Supreme Court does not reach for constitutional questions not raised by the parties. The fact that the issue was mentioned in argument does not bring the question of petitioner's eligibility for parole properly before this Court. Mazer v. Stein, 347 U.S. 201, 206 n.5. (1954)(citations omitted). See generally R. Stern and E. Gressman, Supreme Court Practice. s.6.37 (4th ed. 1969) and cases there cited. However, if this Honorable Court decides to pass upon the question not raised and passed upon by the lower courts. Then, petitioner by way of an affirmative defense will

assert that respondent's contention that petitioner is not eligible for parole until February, 1981 is untrue - unsubstantiated.

This Honorable Court in its decision of Hankerson v. North Carolina, supra, stated:

> Due Process commands that no man shall lose his liberty unless the Government has borne the burden of convincing the factfinder of his guilt.

If the respondent is praying this Honorable Court adjudge petitioner guilty of an unproven offence without a trial, a jury of his peers and a court of the district wherein the crime shall have been committed, then

> to this end, the reasonable doubt standard is indispensable, for it impresses on the trier of the fact the necessity of reaching a subjective certitude of the facts in issue. 397 U.S. at 363-364.

Respondent's specific contention is the escape of course, delayed petitioner's eligibility for parole until February, 1981, hence this Court must decline review. Respondent's unsubstantiated fabricated accusation is frivolous and this petitioner responds by way of an affirmative defence, specifically pleads falsus in uno, falsus in omnibus. Unless respondent can adduce a certified real of a JUDGMENT and COMMITMENT to substantiate its unsubstantiated fabricated accusation to wit escape whereof this petitioner shall have been duly convicted. Respondent does not meet that kind of burden which was contemplated by the application of this Honorable Court's decision of Hankerson v. North Carolina, 397 U.S. at 363-364. If as respondents confess and confirm if it be so that petitioner's case has not been investigated for parole so because prior to submission of reports to the Parole Commission, petitioner was denied access to information in his parole file hence his inability to call mistakes or erroneous information to the attention of the case analyst or other person preparing his report could correct it, let alone understand, why parole was denied him, then we may reason that petitioner ipso facto sustained a direct injury as a result of that action. Laird v. Tatum, 408 U.S. 1, 13 (1972) citing Ex Parte Levitt, 302 U.S. 633 (1937). Considering after all petitioner is not a lawyer and know no other way to put it. O'Shea v. Littleton, 411 U.S. 488, 494 (1974).

Taking respondent's allegation as substantiated though unsubstantiated. The Judges of the State of North Carolina are required by statute to state the dates of commencement and termination of sentences. Hence reforming of a superior court sentence, after return from an escape, remains a judicial function which may not be delegated by the court to be performed administratively by the prison officials whose rules are administrative, not judicial, and cannot affect sentences imposed by the courts. See State v. Shoemaker, 273 N.C. 475, 160 S.E. 281 (1968).

Respondent does not allege that the question of petitioner's eligibility for parole consideration was raised and passed upon by the lower courts. This Court may reason that was because the same Affiant before the Court now, James C. Woodard, Chairman of The North Carolina Parole Commission, testifies in his Affidavit subscribed March 28, 1978, a copy of which is submitted herewith and made a part hereof, that,

> In my capacity as Chairman I am responsible for and have direct access to Parole Commission records. I have reviewed the records of Inmates Daniel Ross, William E. Smith, Jimmy Lee Everette, Leroy Watson, William G. Griffin, Bonnie Lee Daye, Allen Lassiter, Amos Harris and Otis Walston. Inmate Daniel Ross will not be eligible for parole consideration until August 31, 1978. His file reflects that a letter of explanation was written to him by case analyst Kaye Byrd on January 19, 1978. Inmate Ross is serving a life sentence for first degree murder and a two year concurrent sentence for assualt with a deadly weapon. In response to Inmate Ross' request for access to records Ms Byrd wrote to him again on February 15, 1978 explaining a Court of Appeals ruling concerning his request. Copies of these letters are attached hereto and incorporated by reference.

Respondent has not adduced a copy of the alleged JUDGMENT and COMMITMENT to wit petitioner's escape conviction which is a violation of N.C.G.S. 148-45, and without this JUDGMENT and COMMITMENT respondent's January 11, 1979 Affidavit of James C. Woodard, Chairman of the North Carolina, provides no adequate basis on which to take respondent's allegation as true.

Accordingly, this Honorable Court may not accept respondent's invitation in undermining the presumption of petitioner's innocence. Patterson v. New York, 432 U.S. at 227 (1977).

---

2. Respondent, James C. Woodard testifies in his Affidavit subscribed 11 January 1979 as noted herein, Daniel Ross

see pp. 5-6 , infra.

II. THE DUE PROCESS CLAUSE DOES APPLY TO DECISIONS TO GRANT OR DENY PAROLE IN NORTH CAROLINA.

North Carolina General Statute 148-58, is not so nebulous so vague that the statute on its face set forth an incomprehensible language if even impredise standard of conduct - demonstrates that "the key words are guaranteeing to every prisoner a review and consideration of his case on the merits. A thing respondents elected not to do in petitioner's case, and that the fable reasonable man may have little difficulty in understanding the general meaning of the phrase: guaranteeing to every prisoners a review and consideration of his case on the merits. Colten v. Kentucky, 407 U.S. 104, 110, 92 S.Ct. 1953,1957, 32 L.Ed.2d 584, 589-90 (1972) and passes constitutional muster if generally understandable. Where liberty as distinct from property interests are at stake fact that individual does not enjoy a legitimate claim of entitlement does not preclude right to due process guarantees. The holdings in Lombardo v. Meachum 548 F.2d 13, 16 (1st. Cir. 1977) and Four Certain Unnamed Inmates v. Hall, 550 F.2d 1291 (1st. Cir. 1977) relied on by respondents, do not detract from the validity of this view. Meachum and Hall both turned primarily on whether a right to be conferred in the exercise of administrative discretion. Where "liberty" as distinct from "property" interests are at stake, the fact that an individual does not enjoy "a legitimate claim of entitlement" does not precludethe right to due process guarantees. Application of the Fourteenth Amendment no longer hinges on "whether a claim involves a "right" or a "privilege". Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed.2d 534 (1971); Morrissey v. Brewer, 408 U.S. at 481, 92 S.Ct. at 2600, 33 L.Ed.2d at 494.

---

3. began serving his sentence on March 26, 1969 and after serving six years and four months of his sentence he escaped from the facilities of the Department of Correction. Daniel Ross was returned to the authority of the Department of Correction on September 29, 1977 after having been out on escape for approximately two years and two months. Daniel Ross has served one year and three months since having been returned to the Department of Correction in September, 1977. But see AffiantWoodard's Affidavit subscribed March 28, 1978 and compare.

Thus, while respondents are correct that prisoners have no right to parole, but only a right to be considered for release by the Board, this distinction is without constitutional significance. Bradford v. Weinstein, 519 F.2d at 732, (4th Cir. 1974), v acated as moot, 423 U.S. 147, 96 S.Ct. 347, 46 L.Ed.2d 350 (1975).

Respondent by its own admission voluntarily that their analysis of this question has not been universally accepted.[4] That the Circuit Courts have anlyzed a variety of Parole Eligibility Statutes in a variety of ways, and petitioner concedes. Nevertheless, when the Circuit Courts have decided an important question of federal law in conflict with another Circuit Court such as appearing in the case at bar which has not been settled by the Supreme Court, but should be, the Supreme Court will not hesitate to settle the conflict. . . acknowledging that there are indications both ways in recent Supreme Court opinions. See discussion, Williams v. Ward, 556 F.2d 1143, 1157-58 (2d Cir. 1977), cert. dismissed, 434 U.S. 944, 98 S.Ct. 469, 54 L.Ed.2d 323. Respondent's contention that the due process clause does not apply to decisions to grant or deny parole in North Carolina and it entitles respondent to no relief. Because Inmates of North Carolina Penal Complex like Inmate of Nebraska Penal Complex have comparable Statutes entitle petitioner to procedural due process. See N.C.G.S.15A-1371; N.C.G.S. 143B-261.1; N.C.G.S. 148-58; N.C.G.S.148-60 and compare Neb. Rev. Stat. 83-191; Neb. Rev. Stat. 83-192; Neb. Rev. Stat. 83-1, 114; Neb. Rev. Stat. 83-1, 115; Neb. Rev. Stat. 83-192(9). The North Carolina Parole Commission consist of five members. Under North Carolina Law the Parole Commission is charged with the responsibility of determining whether and when an inmate should be released on discretionary parole. N.C.G.S. 148-60 and N.C.G.S.15A-1371. The Commission is required by statute to review and considered every prisoner's case on the merits except not whether or not eligible for parole- must answer the question of whether or not the time served has

4. The Supreme Court has not decided the exact question before the court of whether a prisoner's interest in prospective parole is an interest to be afforded protection under the due process clause of the Fourteenth Amendment.

represented sufficient punishment for the inmates crime a specific authorized action. See N.C.G.S. 143B-261.1; 5 NCAC 4C; 5 NCAC 4D; N.C.G.S.148-60 and N.C.G.S.15A-1371. Hence eligible or ineligible is not so significantly unauthorized actions, only matters of fair judgment. See N.C.G.S. 15A-1371(d), Criteria.

This Court no longer condones the act of confining an incarcerated citizen for treatment if not dangerous. See e.g., O'Connor v. Donaldson, 95 S.Ct. 2494 (1975). Cf. Furman v. Georgia, 408 U.S. 232. 273, 92 S.Ct. 2726, 2741, 33 L.Ed.2d 340 (1972) (Brennan, J. concurring). This Court in a line of cases has said:

> Mere public intolerance or animosity cannot constitutionally justify the deprivation of the incarcerated citizen's physical liberty. Jackson v. Indiana, 406 U.S.738, 92 S.Ct. at 1858; Cohen v. California, 403 U.S. 15, 24-26, 91 S.Ct. 1780, 1787-1789, 29 L.Ed.2d 284; Coates v. City of Cincinnati, 402 U.S. 611, 615, 91 S.Ct. 1686, 1689, 29 L.Ed.2d 214; Street v. New York, 394 U.S. 576, 592, 89 S.Ct. 1354; 1365-1366, 22 L.Ed.2d 572; Cf. U.S. Dept. of Agriculture v. Moreno, 413 U.S. 528, 534, 93 S.Ct. 2821,2825-2826, 37 L.Ed.2d 782.

This Court has gone as far as to assert the fact that State laws have authorized confinement of the incarcerated citizen does not itself establish a constitutionally adequate purpose for the confinement. Jackson v. Indiana, 406 U.S. at 720-723, 92 S.Ct. at 1849-1851; McNeil v. Director Patuzent Institution, 407 U.S. 245, 248-250, 92 S.Ct. 2083, 2086-2087, 32 L.Ed.2d 719 after that basis no longer exists. Jackson v. Indiana, supra. Hence whether petitioner is eligible or ineligible for parole is of little or no significant because even if ineligible though not, that is a less important question than the fact that state laws have authorized confinement of the petitioner. Whether the Commission has answered the question whether or not the time served has represented sufficient punishment for the petitioner's crime after that basis no longer exists- authorized action, and whether denial of access to information in his parole file was fatal here. Laird v. Tatum, 408 U.S. 1, 13 (1972) citing Ex Parte Levitt, 302 U.S. 633 (1937). 5

5. If the Parole Chairman did not inform Ross of reasons he was denied parole November 30, 1978 until January 15, 1979 after Ross was allegedly returned to the authority of the Department of Correction on September 29, 1977. Mere public intolerance

6. see pp. 5-6 n2. , infra and pp. 8-9

This Court may take judicial notice that respondent does not allege that there is a substantial risk that petitioner will conform to reasonable conditions of parole; or his release at that time would depreciate the seriousness of his crime or promote disrespect for law; or his continued correctional treatment, medical care, pr vocational or other training in the institution will substantially enhance his capacity to lead a law-abiding life if he is released at a later date; or there is substantial risk that he would engage in further criminal conduct. See N.C. G.S. 148-60 and N.C.G.S. 15A-1371(d), Criteria, (1),(2),(3),(4).[7]

Since respondent on its own, did intelligently and voluntarily confess that the procedural question raised by Ross is similar to that already before the Court in Inmates of Nebraska Penal Complex v. Greenholtz, No. 78-201. Petitioner believe that it would be appropriate to confirm respondent's welcome confession in adopting portions of Inmates of Nebraska Penal Complex v. Greenholtz's premises- particularizes and in responding to respondent's allegations; respectfully submits that:

> While parole applicant's status is not changed by denial of his application for parole in the sense that he remains in the same custodial situation as before, the necessity of due process to support denial is not therefore obviated, for the status remains the same because of a Parole Board determination which if favorable would have changed the status to one of greater liberty. Inmates of Nebraska Penal and Correctional Complex v. Greenholtz, 576 F?2d.1271 (8th Cir.) cert. granted, ___U.S.___(October 2, 1978).
>
> The nature of the interest at stake in both parole release and parole revocation is the same, conditional liberty versus incarceration, and therefore, the Fourteenth Amendment applies to both. Inmates of Nebraska Penal Complex v. Greenholtz, supra.

---

7. or animosity cannot justify the deprivation of petitioner's physical liberty. Petitioner testifies in his Affidavit before the court that until the case reach the Supreme Court he was not informed of any reason of the denial of parole November 30, 1978, and appears as petitioner testifies because of his character as a jailhouse lawyer, a prison civil rights activist and his classification of many characters by the prisoncrats.

> Since the protection of the due process clause extends to parolees, it may not be denied to inmates; prisoners may not be deprived oflife, liberty, or property without due process of law. Inmates of Nebraska Penal Complex v. Greenholtz, supra.
>
> Society has an interest in not having release on parole denied because of an erroneous determination, and society has a further interest in treating prisoner with basic fairness. Inmates of Nebraska Penal Complex v. Greenholtz, supra.
>
> Where state had made parole an intergral part of its penological system and had provided that those eligible for parole were to be released on parole unless one of reasons for denial specified in the statute was found to be present, the authority to deny parole could not be exercised arbitrarily. See N.C. G.S. 15A-1371; N.C.G.S. 143B-261.1; N.C.G.S. 148-58; N.C.G.S. 148-60/.
>
> Because state prisoner's statutory right to fair parole consideration involved prisoner's liberty interest, prisoner's right to consideration for parole was an aspect of liberty to which protection of due process clause...extended. Inmates of Nebraska Penal Complex v. Greenholtz, supra.
>
> Although severity of loss is not a factor in determining whether govermental action implicates the Fourteenth Amendment, is a factor when considering extent to which procedural safeguards are required. Inmates of Nebraska of Penal Complex v. Greenholtz, supra.
>
> Parole decision is not a part of a criminal prosecution, and full panoply of rights to a defendant in such proceedings does not apply.
>
> At a minimum, once it is determined that an interest is protected by the due process clause, a hearing for the person affected is required. INMATES of Nebraska Penal Complex v. Greenholtz, supra.
>
> Under North Carolina Law, prisoner has right to be considered for parole on basis of certain statutory specifications; to make such right effective, prisoner must be given the opportunity to personally appear before the State Board of Parole to explain and amplify the information on which the Board will base its decision, and the administrative inconvenience and cost of a personal hearing is not sufficient to deprive a prisoner of such right. Inmates of Nebraska Penal Complex v. Greenholtz, supra.

III. ROSS IS [illegible] ENTITLED TO INSPECT HIS FILE TO DETERMINE WHETHER IT CONTAINS ERRORS.

North Carolina General Statute 148-58 creates a liberty or property interest where the language on the face of its statute makes clear that the statute shall be construed as only guaranteeing to every prisoner a review and consideration of his case on the merits. Although Inmates of North Carolina Penal Complex not unlike Inmates of Nebraska Penal Complex have comparable statutes entitle petitioner to procedural due process. The modus operada of the North Carolina Parole Commission is more egregious than that found in Inmates of Nebraska Penal Complex v. Greenholtz, No. 78-201, and unlike Inmates of Nebraska

Penal Complex and Inmates of United States Federal Penal Complex, prior to submission of progress reports to the North Carolina Parole Commission, inmates are not shown reports based upon information contained in their central file. They are not given the opportunity to read and agree or disagree with the contents thereof. If there mistakes or erroneous information in their file they cannot call it to the attention of the case analyst or other persons preparing their ~~reports~~ Report so they can correct it. They are not ~~published~~ provided with a summary withheld, or furnished with a copy of the summaries before their parole hearing. Petitioner here was not furnished. There is no available remedy to request a full and complete record of every proceeding and the North Carolina Parole Commission does not make those available to its inmates. If the inmate is denied parole, no conference is setup between the Parole Commission and the inmate, or the examiner thereof, to explain the reasons why he was denied, and no recommendations are made for correcting the deficiencies. Petitioner here was not told and no recommendations were made for correcting the deficiencies. No one tell the inmate what steps he might take to enhance his chances of making parole at his next hearing. Petitioner exhibits and th e Court's records res ipso loquitur that the petitioner here was not told what steps he might take until he petitioned the hightest court of our nation under God individually for which it stands for liberty and justice for all. See Title 18 U.S.C. 4201 et seq., see also Freedom Information Act 5 U.S.C.A. 552 et seq., see also Inmates of Nebraska Penal Complex v. Greenholtz, No. 78-201, and compare North Carolina General Statutes N.C.G.S. 15A-1371; N.C.G.S. 143B-261.1; N.C. G.S.148-58; N.C.G.S. 148-60. Recognizing the egregious distinctions between Inmates of Nebraska Penal Complex, Inmates of United States Federal Penal Complex, and North Carolina Parole Commission - cannot constitutionally deny access to its parole files and notice of intention to so classify together with factual data upon which the Commission believes such classification appropriate no later than the in prison interview when it would be a greivous loss for a prisoner like petitioner here, by reason of a completely ex parte proceeding, and the resulting increased opportunity for committing error, to be denied parole and required to serve more of his term because the attention of the Parole Commission was not called to data tending to indicate

that parole should be granted. Bradford v. Weinstein, 519 F.2d 728 (4th Cir. 1974), vacated as moot, 423 U.S. 147 (1975). The original panel opinion in Franklin v. Shields, 569 F.2d. 784, 789-90 (4th Cir. 1977), rev'd enbanc 569 F.2d 800 (4th Cir. 1978) was not to the contrary

In Franklin v. Shields, the court there said:

> Since the (state) statutes contemplate that a prisoner who has satisfied all the requirements for parole will be conditionally released, the Board's investigation and review are crucial. A prisoner has much at stake in properly conducted parole proceedings, for they may result in his conditional freedom. If the proceedings are flawed - even unintentionally and in good faith, through reliance on incomplete or incorrect information they may add years to a prisoner's confinement. (A thing happening here). Consequently, the accuracy and the sufficiency of the information the Board obtain in its investigation, which the statutes require, can have a decisive effect on parole. Also, whether the Board's review is full andfair, as contemplated by the statutes,may be a determinative factor in the grant or denial of parole. Therefore, we hold that the Statutes governing the manner in which a prisoner shall be considered for parole confer on the prisoner an interest in liberty. (footnote omitted.).

States which have created the right to consideration of parole may not deny the incarcerated citizen to information in his parole file because theincarcerated citizen's interest is to help himself prepare forconsideration of parole or contention that relates to consideration or the application of fairness. Respondent either closes her eyes so that she want see how N.C.G.S. 148-58 actually reads or that she turns her head to keep from seeing that particularly part of N.C.G.S.148-58 which reads in part:

> ". . . shall be construed as only guaranteeing to every prisoner a review and consideration of his case on the merits. . . ."

North Carolina not unlike Nebraska has a comparable statutory right to fair parole consideration, because this right involves the prisoner's liberty interest, the inmates' right to consideration for parole is an aspect of liberty to which the protection of the due process clause extends. Therefore, the minimum requirement of procedural due process appropriate for the circumstances must be observed. Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). Respondent's contention allowing access to prison files would be burdensome and would undermine efforts to maintain security and promote rehabilitation of prisoners are unpersuasive. Allowing access to prison files imposes no greater burden upon the prison administration than upon thecourts, if as much, and where this right involves the incarcerated citizen's

liberty interest, the prison administration not unlike the courts, may not deny access to its files. See also Freedom Information Act. Respondent admits that in N.C.G.S. 148-60, the North Carolina General Assembly added that "the time of releaseing prisoners shall be fiscretionary." Nevertheless, respondent has no more discretion than the courts and not as much to confine an incarcerated citizen years after years in violation of the Constitution and Laws of the United States. North Carolina not like the other 51 States in the United States, has the highest rate ofprison commitment in the Union. Respondent appears to be thinking in terms of just warehousing incarcerated citizens, who just as free citizens, have an unabridged right to know what their Government says about them. North Carolina may not be an exception. Respondent's contention that opening of files to prisoners would violate the confidentiality of sources importan in the development of background information on prospective parolees is without merit. Access to information in an inmate's files cannot be considered oppressive or objectionable simply because this may cause theParole Commission work, research or expense. Nor is access objectionable because the inmate seeks information guaranteed to him a review and consideration of his own case upon its own merits. Considering the probability of undue burden and expense by providing the incarcerated citizen access to his own files, in the absence of fairness, consideration is non-existence. Though petitioner concede by allowing access to some incarcerated citizens when bad things come out for them to read, they may react irrationally and abnormally. This is natural. Even this Honorable Court itself, at one time or another has witnesses this naturality. But to conclude that by allowing access to incarcerated citizens invites a detrimental psychological effect upon all inmates of negative reports in a logistical sense - suggests a conclusion that incarcerated citizens - all incarcerated citizens - are irrational and un intact persons or human beings. This leave much room for doubt. Respondent does not reveal facts. Instead, reveals its speculative chanacter. These principles were given practical application by this Court in the decision of Row v. Wade, 410 U.S. 113 (1973), where the standing of

a nonpregnant wife, who had received medical advise that pregnancy would endanger her health, to maintain an attach on a state anti-bortion statute was at issue. This Court said, in denying stadding:

> This very phrasing of the Doe's position reveals its speculative character. Their alleged injury rests on possible future contraceptive failure, possible future pregnancy, possible future unprepardness of parenthood, and possible future impairment of health. Any one or more of these several possibilities may take place and all may not combine. In the Doe's estimation, these possibilities may have some real or imagined impact upon their martial happiness. But we are not prepared to say that the bare allegations of so indirect an injury is sufficient to present an actual case or controversy. ROE v. WADE, supra, and compare Sites v. McKenzie, 423 F. Supp. 1190, 1196 (ND.W.Va. 1976).

Some people may be dangerous and not mentally ill and others may be serverly mentally ill but not violent or dangerous. Hence it is very difficult for psychiatrist to predict dangerousness. There is absolutely nothing whatsoever appearing in the record which would suggest that respondent was or is, a licensed psychiatrist to predict dangerousness. Because reports becomes part of the prisoner's files, affecting numerous classfication and parole decisions to be made about him.. Indeed, it may follow him throughout prison system. The Board holds the key to the lock of the prison, It possesses the power to grant or to deny conditional liberty. The result of the Board's exercise of its discretion is that an applicant suffers a greivous loss or gains a conditional liberty. If the Board's decision were based on an erroneous description of the conduct underlying an offense as in petitioner's case at bar but which the petitioner is denied access to information in his file and opportunity to rebut evidence erroneous. He is denied parole anew each time his record is used against him. It happened to petitioner here.

CONCLUSION

For all these reasons, Respondents' contentions are without merit and their Petition for dismissal should be denied.

Respectfully submitted,

DANIEL ROSS, pro se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Counter Response to Petition for Writ of Certiorari to Review a Decision of the United States Court of Appeals for the Fourth Circuit has been mailed, postage prepaid, to the Following:

1/27/79

Mr. Ben G. Irons, II
Assistant Attorney General

N. C. Department of Justice
P. O. Box 629
Raleigh, North Carolina 27602

DANIEL ROSS

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

RALEIGH DIVISION

Civil 78-56-CRT

DANIEL ROSS, ET AL.,

Plaintiff

v.

JAMES B. HUNT, JR., ET AL.,

Defendant

AFFIDAVIT

I, James C. Woodard, being first duly sworn, depose and say:

That I am employed by the State of North Carolina as Chairman of the North Carolina Parole Commission. My office is located at 831 West Morgan Street, Raleigh, North Carolina.

In my capacity as Chairman I am responsible for and have direct access to Parole Commission records. I have reviewed the records of Inmates Daniel Ross, William E. Smith, Jimmy Lee Everette, Leroy Watson, William G. Griffin, Bonnie Lee Baye, Allen Lassiter, Amos Harris and Otis Walston.

Inmate Daniel Ross will not be eligible for parole consideration until August 31, 1978. His file reflects that a letter of explanation was written to him by case analyst Kaye Byrd on January 19, 1978. Inmate Ross is serving a life sentence for first degree murder and a two year concurrent sentence for assault with a deadly weapon. In response to Inmate Ross' request for access to records Ms. Byrd wrote to him again on February 15, 1978 explaining a Court of Appeals ruling concerning his request. Copies of these letters are attached hereto and incorporated by reference.

Inmate William E. Smith was reviewed for parole in February, 1977. The Parole Commission, at that time, declined to parole Inmate Smith. Their decision was based on previous criminal record, nature of crime committed, custody grade and previous

probation record. Inmate Smith was notified of the Parole Commission's decision and reasons therefore by letter dated February 22, 1977 from case analyst Mary R. Logan. Inmate Smith was again reviewed for parole during February, 1978. The Commission declined to parole Inmate Smith at this time. Their decision was based on his present custody level and unsatisfactory institution conduct. Inmate Smith was notified of the Parole Commission's decision and reasons therefore by letter dated February 14, 1978 from case analyst Sam Boyd. Copies of the above referenced letters are attached hereto and incorporated by reference.

Inmate Jimmy Lee Everett is not eligible for parole consideration until January 29, 1983. He is serving a life sentence for first degree murder. Inmate Everette received a letter from C. Dempsey McDaniel, Parole Commission member, dated July 25, 1975 responding to Inmate Everette's correspondence to Governor Holshouser concerning a request for a new trial and informing him of his parole consideration date. A copy of this letter is attached hereto and incorporated by reference.

Inmate Leroy Watson was first reviewed for parole on November 14, 1975. Parole was denied at that time due to prior criminal record and custody level. Inmate Watson was notified of the Commission's decision and reasons therefore by letter dated December 3, 1975 from case analyst Marcelle Parrish. Inmate Watson was again reviewed for parole during November of 1976. Parole was denied at this time due to poor prison conduct and custody level. Inmate Watson was notified of this decision and reasons therefore by letter dated November 29, 1976 from case analyst Marcelle Parrish. Inmate Watson was last reviewed in November of 1977. At that time the Parole Commission denied parole due to custody level and unsatisfactory institutional conduct record. Inmate Watson was notified of this decision and reasons therefore by letter dated November 22, 1977. His

case will be reviewed again on June 25, 1978. The above referenced letters are attached hereto and incorporated by reference.

Inmate William G. Griffin is serving a life sentence on conviction of Rape and eighteen to twenty-four months, six months, thirty days and eighteen to twenty-four months concurrently for Larceny, Reckless Driving, Failure to Heed a Siren and Failure to Stop after an Accident resulting in Property Damage. His parole consideration date is January 27, 1981. Our records reveal that Inmate Griffin's mother, Mrs. Christine Tillman, was informed of these facts by letter dated March 28, 1973 from David L. Jones, Secretary of the Department of Correction at that time. A copy of this letter is attached hereto and incorporated by reference.

Inmate Bennie Lee Daye was first reviewed for parole during March of 1976 at which time parole was denied. The Commission felt that Inmate Daye should be under observation on the work release program and receive continued correctional treatment. Inmate Daye was notified of this decision by letter dated March 17, 1976 from case analyst Sandra Elliot. He was again reviewed for parole on February 12, 1977. At this time parole was denied due to previous court and prison record and the nature and circumstances of his crime. The records indicate an extensive criminal record dating back to 1951. Inmate Daye is presently incarcerated for selling narcotic drugs. Inmate Daye was notified of the Parole Commission's decision and reasons therefore by letter dated March 3, 1977 from case analyst Sandra Elliot. The letters mentioned above are attached hereto and incorporated by reference.

Inmate Allen Lassiter is eligible for parole consideration in October, 1978. Inmate Lassiter was informed of his parole eligibility status by letter dated February 3, 1977 from case analyst L. M. Mitchell. A copy of this letter is attached

hereto and incorporated by reference.

Inmate Amos Harris was first reviewed for parole on March 30, 1976. The Parole Commission denied parole at that time due to poor prison conduct and custody level. Inmate Harris was informed of this decision by letter dated April 8, 1976 from case analyst Jean M. Mallard. Inmate Harris was again reviewed on January 25, 1978. The Commission denied parole at this time due to poor prison conduct and custody level. Inmate Harris was notified of this decision by letter dated February 13, 1978. His case is scheduled for review again on January 28, 1979. The letters referred to above are attached hereto and incorporated by reference.

Inmate Otis Walston will be eligible for parole consideration on January 20, 1982. A letter to Mrs. Otis Walston dated August 22, 1977 from case analyst Marcelle Parrish, responding to Mrs. Walston's inquiry of the Governor's office concerning her husband is attached hereto and incorporated by reference. Inmate Walston is serving a twenty year sentence for armed robbery. Mrs. Walston made a further inquiry concerning her husband's case to Senator Robert Morgan in July, 1977. Case analyst Marcelle Parrish responded by letter dated August 24, 1977 to Mrs. Walston further clarifying the Parole Commission's position concerning Inmate Walston's case. A copy of Ms. Parrish's letter dated August 24, 1977 to Mrs. Walston is attached hereto and incorporated by reference.

I specifically deny that these inmates have been discriminated against because of race, religion or national origin. An inmate's race, religion or national origin has absolutely no bearing on his parole eligibility. The above named inmates have been treated in the same manner as any other inmates in the State's Prison System.

This the 28 day of March, 1978.

James C Woodall
Affiant

Sworn to and subscribed before me
this the 28th day of March, 1978.

Esta E. Allen
Notary Public

My Commission Expires: My Commission Expires Dec 5, 1979

Civil Action
78-0535

Inmates' suit charges racial discrimination

By RON KERTZNER
Staff Writer

Two inmates at the Franklin County Prison Unit, acting on behalf of 70 other prisoners, have filed a racial discrimination and segregation lawsuit against the state Department of Correction.

Daniel Ross and Jerryl A. Martin asked in the lawsuit filed in U.S. District Court in Raleigh last month that the prison be placed under federal supervision.

They claimed that discrimination and segregation have been used by the correction department in the classification of black prisoners.

"Black prisoners are disproportionately held in the medium security section when prison officials know they deserve privileges offered as an inducement for good conduct. (But) white prisoners can get offense reports, show little or no respect and get promoted to minimum custody," the suit said.

Ross and Martin also said black prisoners are arbitrarily and systematically excluded from federally funded education and vocational services and have been "racially and discriminately denied favorable recommendations for considerations for parole."

The suit charged the department with violating the Civil Rights Act of 1964.

David M. Blackwell, senior administrative assistant with the Department of Correction, would not comment on the suit and said the "appropriate material" was being sent to the state attorney general's office.

Blackwell said his office has handled several lawsuits similiar to the one filed by Ross and Martin. The department has not lost any of the suits, Blackwell said.

In a letter addressed to Martin on Oct. 26, U.S. Attorney George M. Anderson said the request that the federal government supervise the prison unit was forwarded to the U.S. Department of Justice.

Anderson said the Justice Department would decide whether the U.S. District Court could intervene.

Martin is serving a 16- to 20-year sentence for re[b] and attempted robbery with a dangerous weapon. He serving a life sentence for first-degree murder.

Both men said the composition of the state Corre[c] Department, in which they say nearly all top-level sion-making positions are held by whites, is responsi[b] the racial discrimination and segregation in the Fra[n] County Prison Unit.

The suit said that only one black is employed on the Paroles Commission, which "determines whether prisoners get the opportunity to return to the commun promptly as practicable."

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NORTH CAROLINA

P. O. Box 25670

RALEIGH, NORTH CAROLINA 27611

JOHN R. WHITTY
CLERK

TELEPHONE 755-1330
AREA CODE 919

October 19, 1978

The Honorable F. T. Dupree, Jr.
United States District Judge
Eastern District of North Carolina
Raleigh, North Carolina

Re: Civil Rights Roster No. 1592 -

Daniel Ross v. James G. Hodges, etc., et al.

Case Judge Dupree

Enclosed please find a copy of the following papers received from above-named prisoner on October 19, 1978

1. Declaration in Support of Request to Proceed In Forma Pauperis
2. Complaint

Our records disclose that this prisoner has previously submitted the following civil action(s): see attached sheet

Roster No. _____ Case No. _____

Date filed _____ in forma pauperis (yes) (no)

Date closed _____

If you allow this complaint to be filed in forma pauperis, we will assign a Raleigh Division civil number and serve a copy of the complaint on the defendants.

Sincerely,

JOHN R. WHITTY, Clerk

By _____
Deputy Clerk

Enclosures

cc: Mr. Daniel Ross
P.O. Box 155
Lynn, N.C. 27553

Civil Rights Actions filed in the Eastern District of N.C. by Daniel Ross since 1974 : (* allowed to proceed in forma pauperis)

ROSTER NO.	CASE NO.	DATE FILED	DATE CLOSED
1346	78-0056-CRT	2/1/78	Pending
1376	78-0142-CRT	3/21/78 *	4/10/78
1392	78-0167-CRT	4/12/78 *	7/28/78
1390	78-0172-CRT	4/17/78 *	5/3/78
1395	78-0173-CRT	4/20/78 *	4/21/78
1460	78-0337-CRT	7/14/78 *	7/26/78
1446	78-0317-CRT	7/7/78 *	7/7/78
1474	78-0327-CRT	7/12/78 *	7/12/78
1479	78-0328-CRT	7/12/78 *	7/12/78
1480	78-0318-CRT	7/10/78	7/10/78
1492	78-0351-CRT	7/26/78	7/26/78
1500	78-0452-CRT	9/14/78 *	9/14/78
1570			
1576			

STATE OF NORTH CAROLINA
COUNTY OF HALIFAX

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILE NO. _____
FILE NO. _____

In re:

INMATE CLEM[illegible] PITT

v.

GEORGE D. ROCHE, as Defendant

and

FREDERICK HEAMON, as Defendant

AFFIDAVIT IN RE: OUT OF [illegible]
AND CRIMINAL CONVICTION
OF DIVISION INMATE CLEM[illegible]

CLEM[illegible], being first duly sworn under oath deposes and says:

That I am and at all times prior to the submission of this affidavit, a citizen of the United States, over the age of twenty-one, and a resident of Halifax County, North Carolina, who is incarcerated in the Caledonia Prison Farm, Halifax County, North Carolina, and am presently so incarcerated but that from November or [illegible] of 1972, I was incarcerated in the Caledonia Prison Farm, Halifax County, North Carolina. That I make this Affidavit pro hac vice on behalf of and for the benefit of, Inmate Clem[illegible] Earl Pitt, and do make, and have made, without promise of remuneration, inducements, threats or the like, and of my own free will, each and every statement contained herein.

That I was employed as a Caledonia Former Inmate Medicine Room Clerk, and in this capacity, I had occasion to learn about the mis, non, and untimely medical treatment of inmates as received in the Caledonia Prison which resulted from an 'arbitrary or capricious' exercise of judgment by prison officials, and not only by Defendants George D. [illegible] and Frederick Heamon, but also by Director of Division of Prisons one Dalton [illegible], or should have had, knowledge of defendants' acts and omissions [illegible], and involving the alleged untimely medical treatment of the [illegible] Clem[illegible] Earl Pitt, and other inmates.

But as is known, and have been documented, [illegible] inmates on administrative segregation where the decease dies, have swallowed razor blades in their efforts to get adequate, sufficient and timely medical treatment and were transported to the General Prison Hospital for operative medical treatment, and returned to the Caledonia Prison and again, placed on administrative segregation, [illegible] or supervision and provision sufficiently to have been made, and [illegible] the same thing all over again. In addition, inmates have inflicted serious wounds upon themselves, and have been assaulted by defendants, their servants, [illegible] and those acting in interest, or because of lex talionis between the inmate and the Caledonia Prison officials, and prison reprisal as a whole. That of my own knowledge [illegible] Caledonia Prison Farm, on Block, and of my own knowledge [illegible] there, inmates were diagnosed overdosages of Control Substances [illegible] prohibited them in [illegible] or capricious' judgment by prison officials [illegible] lack of inadequate, insufficient, and untimely medical treatment, and [illegible] degree of human treatment. E.g., Controlled Substance daily and [illegible] diagnosed, were not accurately documented until sometimes after the [illegible] and documents recorded did not become recorded until sometime during the [illegible] of 1973. It should be noted, however, that I was interviewed by the Director of Division of Prisons assistants regarding matters and things about inmate medical treatment, [illegible] of officials' acts, while incarcerated in the Caledonia Prison but [illegible] or known [illegible] to relief forseen.

Accordingly, I specifically [illegible] that the [illegible] as a result of an 'arbitrary or capricious' exercise of judgment by prison officials.

[illegible]
AFFIANT

Described and sworn to before me
this 3rd day of September, 1973

[illegible]
Notary Public

[illegible]
My Commission Expires

-2-

Exhibit A

...inmate's death investigation is completed

State Bureau of Investigation agents have completed an inquiry into actions of Caledonia prison personnel who had custody of an asthmatic inmate who died Christmas Eve.

Glen Earl Pitt, 24, of Enfield, had previously been treated for asthma at the Central Prison hospital and had been back at Caledonia in Halifax County only for a few days before becoming ill on Dec. 24. He collapsed and was pronounced dead on arrival at a Scotland Neck hospital.

The report, described by SBI sources as "lengthy," will be sent next week to W.H.S. Burgwyn Jr., district attorney for that area.

A letter signed by 365 prison inmate was sent to Pitt's family. It alleged that he was denied adequate treatment and died as a result.

Pitt was in the fourth month of a [illegible] year

October 31, 1978

Daniel Bond #207A792-88
Franklin County
P. O. Box 156
Bunn, North Carolina 27508

Mr. James L. Goddard
Chairman of The Parole Commission
121 West Morgan Street
Raleigh, North Carolina 27603

Re: Arbitrary and Systematic Exclusion of benefits of North Carolina General Statutes 148-63 Pre-Parole Investigation

Dear Mr. Goddard:

I have read the Parole Criteria 5NCAC 1C Policy, Review and Investigation beginning at .1601 and concluding at .1619 including Article 19 North Carolina General Statutes 148-62 through 148-85. Please inform me or otherwise advise why I, and said Daniel Bond, am being systematically excluded from every possible consideration at parole and denial of pre-parole investigation.

In summary, how does my residence, employment and military service in Philadelphia, Pennsylvania have not and are not being checked [illegible] Is it possible that you have no intention of providing me with [illegible] consideration at parole? If you do not answer within [illegible] receipt within 7 working days. I will deem my request denied either in whole or in part, please inform me as to your appeals procedure since the Inmate Grievance Commission has no authority over Parole Commission.

Thank you for your prompt attention in this matter.

Respectfully submitted,
Daniel Bond
#207A792

cc:
Margaret Croom
[illegible] & SHARON THOMPSON
Attorneys at Law
1210 Capital Club Building, P. O. Box [illegible]
Raleigh, North Carolina 27602

Mr. Norman B. Smith, Esquire
General Counsel
North Carolina Civil Liberties Union
P. O. Box 3094, Greensboro, NC 27402

Hon. Lewis [illegible]
U. S. Magistrate
(Case v. [illegible]
No. 78-66-
P. O. Box 2[illegible]
Raleigh, NC 27602

RUFUS L. EDMISTEN
ATTORNEY GENERAL

State of North Carolina
Department of Justice
P. O. Box 629
RALEIGH
27602

29 August 1978

Mr. Daniel Ross
Bunn Correctional Institute
Post Office Box 155
Bunn, North Carolina 27808

Re: Ross v. Reed, 78-26-HC

Dear Inmate Ross:

In response to your August 27, 1978, memo concerning the above-referenced case and your petition for bail pending determination of the case, I continue to oppose release on bond or recognizance pending the outcome of the case.

Turning to another matter, your memo of August 22, 1978, which I forwarded to my co-worker Mr. Safron by letter of 28 August 1978, caused him to express concern that you may be encouraged to file more law suits by virtue of my sending your letter to him. I therefore request that you file only those law suits that you would have in the event I had not sent your memo to him.

Again, trusting your rehabilitation is coming along well, I remain

Very truly yours,

RUFUS L. EDMISTEN
ATTORNEY GENERAL

Richard N. League
Assistant Attorney General

RNL/ejm

cc: Honorable F. T. Dupree, Jr.
Mr. Jacob L. Safron

VAN WINKLE, BUCK, WALL, STARNES, HYDE AND DAVIS, P. A.
ATTORNEYS AND COUNSELLORS AT LAW
18 CHURCH STREET
POST OFFICE BOX 7376
ASHEVILLE, NORTH CAROLINA 28807
704-258-2991

O. C. STARNES, JR.
HERBERT L. HYDE
ROY W. DAVIS, JR.
BRIAN P. D. LAVELLE
LARRY MCDEVITT
PHILIP J. SMITH
GARY B. KEMPSON
ALBERT L. SNEED, JR.
RUSSELL P. BRANNON
ALFRED G. ADAMS
HOWARD L. GUN
DAVID R. MILLER
ROBERT H. HASSARD (ON LEAVE)

KINGSLAND VAN WINKLE
1879-1958

OF COUNSEL
CHARLES B. BUCK
ROBERTSON WALL

July 25, 1978

Mr. Daniel Ross
Caledonia Prison
Post Office Box 137
Tillery, North Carolina 27887

Dear Mr. Ross:

This will acknowledge receipt of your letters of June 20 and June 25, 1978, along with Norman Smith's letter of May 11, 1978, containing a copy of the reply you filed in response to the State's motion to dismiss filed in your civil rights suit. Congratulations on successfully withstanding the motion to dismiss. Your reply was very thorough, and I am sure it was most helpful to the Court in making its decision.

I appreciate your interest in the complaint we have filed. We will be happy to bring you up to date. The State has filed a petition for a writ of certiorari from the U. S. Supreme Court. The writ was filed on June 26, 1978. Our reply brief has been prepared and is now being printed for filing in the Supreme Court later this week. It remains to be seen whether the Supreme Court will grant the writ. I hope you will keep in touch with us, as I believe your testimony might be of value in the event we ever get this case to trial. If you have information on any other individuals who have had personal experiences which would make them valuable as witnesses, I would appreciate your letting me know their names.

By the way, is Robert Fink still at Caledonia? If so, I would appreciate your letting him see this letter. If he is not there and you know where he is now, I would appreciate your letting me know his address.

Sincerely yours,

RUSSELL P. BRANNON

RPB:yr

North Carolina
Civil Liberties Union
Legal Foundation

814 Southeastern Building
P.O. Box 3094
Greensboro, North Carolina
27402

(919) 273-1641

President: Sarah H. Ramsey
Vice President: C. Frank Goldsmith
Secretary: Mike Glancy
Treasurer: Dave DuRusson
Affiliate Delegate National Board:
Katherine Sebo
General Counsel: Norman B. Smith

Members of the Board:
Don Baer, Fayetteville
Dorothy Bernholz, Chapel Hill
Inzer Byers, Winston-Salem
A. J. H. Clement, Durham
Ruth E. Cook, Raleigh
Mary Daugherty, Greenville
Shirlee Gaines Edwards, Blowing Rock
Chuck Eppinette, Raleigh
Rev. W. W. Finlator, Raleigh
A. S. Galbraith, Durham
Karen Gottovi, Wilmington
Hoke Griffin, Charlotte
John Harmon, New Bern
Curtis Harper, Chapel Hill
Wilbur Hobby, Raleigh
Judy Leonard, Chapel Hill
Tom Loflin, Durham
Deborah Malman, Raleigh
Fr. H. C. Mulholland, Greenville
Slater Newman, Raleigh
William G. Pfefferkorn, Winston-Salem
Daniel H. Pollitt, Chapel Hill
Herman Respess, Greensboro
Joe Schatz, Hendersonville
Jean Wagner, Chapel Hill
James J. Wall, Wilmington
Marion Wright, Linville Falls

Editor, Newsletter:
Tom Tedford

Executive Director:
George H. Gardner

June 27, 1978

Mr. Daniel Ross
P. O. Box 137
Tillery, North Carolina 27887

Dear Mr. Ross:

The Board of Directors of the North Carolina Civil Liberties Union Legal Foundation decided at their June 17th meeting to give further consideration to the matters that you brought to my attention. These are proposed lawsuits to remedy the practice of placing inmates on lockup who file grievances in an effort to coerce them to withdraw their petitions, and the requirement that all outgoing court papers be examined by correctional personnel before mailing. It was decided that these two items should be turned over to the North Carolina Prisoner's Rights Project for investigation and evaluation before proceeding further. By copy of this letter I am transmitting your correspondence to the Prisoner's Right Project. You should be hearing from that office soon.

Yours sincerely,

Norman B. Smith

NBS/gt

cc: North Carolina Prisoner's Rights Project
University of North Carolina Law School
Chapel Hill, North Carolina 27514

William W. Merriman III
Merriman and Nicholls
P.O. Box 18237
Raleigh, NC 27619
Tele: 919-781-1311

STATE OF NORTH CAROLINA
DEPARTMENT OF CORRECTION

JAMES B. HUNT, JR.
Governor

AMOS E. REED
Secretary

NORTH CAROLINA
DEPARTMENT OF CORRECTION

840 W. Morgan Street Raleigh, N. C. 27603 (919) 733-4926

June 19, 1978

Mr. Daniel Ross
P. O. Box 137
Tillery, North Carolina 27887

Dear Mr. Ross:

The materials you sent to Secretary Reed were forwarded to me for response.

The materials relating to Mr. Pitt will be made part of our files in the case. The Secretary and the Director are both well aware of the situation. Every death is tragic. As you are aware, the State Bureau of Investigation has investigated the death. There is also a possibility that litigation may occur in this case. I must decline to discuss the situation further because of the pending litigation.

The materials relating to Ross v. Sanders, Civil No. 78-167-CRT, will be forwarded to the Attorney General's Office. The Departments response to the suit has been filed in the District Court and stands as our position.

Sincerely,

Richard Kucharski
Senior Administrative Assitant
Division of Prisons

RK:lmg

cc: Records
Files

DC-410
10/76

GRIEVANCE FORM

A. GRIEVANCE STATEMENT
(Attach Additional Pages if Necessary)

NAME Daniel Ross #207492
LOCATION 4505
DATE 3-31-78 TIME 8:30

ON 3-13-78, I requested to use the Coleman Writ Room was denied by Sgt. Stephenson & Lt. Wilson Chief Rooney. It should be noted that the denial followed a Civil action against by place of confinment to wit 78-56-CIV federal Court. Also denied my monthly telephone call. My mistreatment is personal based on racial hindrances and bias against the writen Daniel Ross, is not use.

Inmate's Signature

B. EVALUATION (Attach Additional Pages if Necessary)

My investigation reveals that inmate Daniel Ross is not assigned to the Writ Room and the two inmates that were assigned to the Writ Room were transferred to central Prison to attend Law Schools.

RECEIVED
CALEDONIA PRISON

Sgt. Willis
Investigator's Signature And Date

Officer In Charge

C. ACTION RECOMMENDED/TAKEN

Locks Merit

UNIT/INSTITUTION COMMITTEE ACTION

Superintendent's Signature And Date

D. ✓ AGREE WITH ACTION TAKEN
APPEAL TO AREA/INSTITUTION REVIEW BOARD

Refused to sign 3-31-78

Inmate's Signature And Date

E. GRIEVANCE REVIEW BOARD RECOMMENDATION (Area/Institutional)

Member

Member

Area Administrator/Institution Head And Date

F. APPEAL TO INMATE GRIEVANCE COMMISSION
AGREE WITH ACTION TAKEN

Inmate's Signature And Date

Distribution: Green Copy—Inmate/IGC (Final Disposition)
Goldenrod Copy—Superintendent, Institution Head
Pink Copy—Warden, Area Administrator, Complex Superintendent, File
Blue Copy—Inmate (Information Copy)
Yellow Copy—Inmate Grievance Commission (Information Copy)

STATE OF NORTH CAROLINA
DEPARTMENT OF CORRECTION

OFFICE MEMORANDUM

TO : David Ross

DATE: March 14,

FROM : Mr. L. V. Stephenson, Superintendent

RE : Petition (Inmate Clerk)

I received the petition signed by the majority of the inmate population in reference to you being assigned to the law library. I discussed this matter with you on March [illegible] and informed you that you were the one that prepared the petition. I have no idea as to how you got the inmates to sign it. I will assure you this will not have any bearing on you being assigned to the law library.

LVS/bb

March 10, 1978

Mr. Fletcher K. Sanders
Complex Administrator
Caledonia-Odom Complex Office
Post Office Box 137
Tillery, North Carolina 27887

Re: Daniel Ross

Dear Mr. Sanders:

Thank you for your detailed letter of February 20, 1978. I appreciate the thoroughness with which you investigated the complaint that I brought to your attention. I have sent Mr. Ross a copy of your letter. If any points remain unresolved in his opinion, I am sure I will hear from him. Then I in turn will get in touch with you.

Yours sincerely,

Norman H. Smith

NHS/ct

CC: Mr. Daniel Ross

NORTH CAROLINA
DEPARTMENT OF CORRECTION
DIVISION OF PRISONS

Governor
AMOS E. REED
Secretary
RALPH D. EDWARDS
Director

CALEDONIA-ODOM COMPLEX OFFICE
Post Office Box 137
Tillery, N. C. 27887

February 20, 1978

Mr. Norman H. Smith
General Counsel
North Carolina Civil Liberties
Union Legal Foundation
Post Office Box 3094
Greensboro, North Carolina 27402

re: Daniel Ross

Dear Mr. Smith:

I have personally talked to Daniel Ross and found that his recent letter to you dated February 8, 1978 was a gross misrepresentation of the facts and either an attempt to con you or an effort to harrass or intimidate the Caledonia staff.

Mr. Creecy indicated that prior to the date mentioned by Ross, he had instructed him that he was to use the writ room exactly as any other inmate with no special privileges. These instructions came about as a result of Ross being a former librarian/clerk when he was formerly assigned to Caledonia. There are presently two librarian/clerks assigned to the facility and regulations require that one of them be present whenever the writ room is in use. This is an effort to safeguard supplies and equipment; and insure that the limited legal material is not misused or destroyed but kept available for everyone's use. Generally, the writ room is open all day and well into the evening; however, there are rare instances where one or both clerks must be out of the area on a limited basis and during that time, inmate use of the writ room is not allowed.

During my conversation with Inmate Ross, he admitted that he had used the writ room on a daily basis without exception since his return to Caledonia. He further admitted that he knew of no other inmate in the institution that had used the writ facility on such a regular basis. He further admitted that he did not have any law suit against the Caledonia Institution nor its staff. It, therefore, would seem totally absurd that a staff member would place any pressure against Ross to drop a non-existant law suit. Ross admitted to me that no such pressure had been applied.

I assure you that Daniel Ross is using the writ room and that he has not been mistreated in any way. If I can be of further assistance to you, please notify me.

Sincerely,

Fletcher K. Sanders
Complex Administrator

FKS/pkh

JAMES B. HUNT, JR.
GOVERNOR

JAMES C. WOODARD
CHAIRMAN

State of North Carolina
Parole Commission

831 West Morgan Street
Raleigh 27603
TELEPHONE 733-3414

COMMISSIONERS
JANE G. GREENLEE
J. C. JONES
RAE H. McNAMARA
HENRY W. OXENDINE

March 9, 1978

Mr. Daniel Ross #20747-92 (KB)
Caledonia - 3305

Dear Mr. Ross:

Your January 22 petition to Governor Hunt requesting commutation, pardon or early parole has been referred to the Parole Commission for study and reply.

The file reflects that you are serving a life sentence for first degree murder and a two-year concurrent sentence for assault with a deadly weapon. After carefully reviewing your case, I am unable to identify any existing situation which would justify a recommendation to Governor Hunt that your sentence be commuted or otherwise reduced. State Law requires that an inmate serve a minimum of one-fourth of his sentence, or, in your case, 10 years before you can be eligible for parole consideration. Therefore, we can take no action in your case prior to your parole eligibility date of November 30, 1978. Your case is scheduled to be reviewed for parole 90 days prior to that date, and you may be assured that you will receive every possible consideration.

I urge you to maintain the very best possible attitude and conduct record, as this is taken into consideration by the Commission when making a decision in your case, and is also considered by the Division of Prisons in promoting you to minimum custody.

Sincerely,

Kaye Byrd
Case Analyst

KB:ew

State of North Carolina
Parole Commission

831 West Morgan Street

Raleigh 27603

TELEPHONE 733-3414

JAMES B. HUNT, JR.
GOVERNOR

JAMES C. WOODARD
CHAIRMAN

COMMISSIONERS
JANE G. GREENLEE
J. C. JONES
RAE H. McNAMARA
HENRY W. OXENDINE

February 15, 1978

Mr. Daniel Ross #20747-92 (KB)
Caledonia - 3305

Dear Mr. Ross:

This is in response to your request for access to records received in our office on February 9, 1978.

The four Circuit Court of Appeals ruled on January 3, 1978 that "We discern no constitutional requirement that each prisoner receive a personal hearing, have access to his files, or be entitled to call witnesses in his behalf to appear before the Board." In accordance with this ruling, I am unable to comply with your request.

Your case is scheduled to be reviewed for parole August 31, 1978, and you may be assured that you will receive every possible consideration at that time.

Sincerely,

Kaye Byrd
Case Analyst

KB:ew

cc: Deborah G. Mailman, Attorney
Deborah Mailman & Sharon Thompson
Attorneys at Law
Capital Club Building, P. O. Box 868
Raleigh, North Carolina 27602

North Carolina Civil Liberties Union Legal Foundation

814 Southeastern Building
P.O. Box 3094
Greensboro, North Carolina
27402

(919) 273-1641

President: Sarah H. Ramsey
Vice President: C. Frank Goldsmith
Secretary: Mike Glancy
Treasurer: Dave DuBurson
Affiliate Delegate National Board: Katherine Sebo
General Counsel: Norman B. Smith

Members of the Board:
Don Baer, Fayetteville
Dorothy Bernholz, Chapel Hill
Inzer Byers, Winston-Salem
A. J. H. Clement, Durham
Ruth E. Cook, Raleigh
Mary Daugherty, Greenville
Shirlee Gaines Edwards, Blowing Rock
Chuck Eppinette, Raleigh
Rev. W. W. Finlator, Raleigh
A. S. Galbraith, Durham
Karen Gottovi, Wilmington
Hoke Griffin, Charlotte
John Harmon, New Bern
Curtis Harper, Chapel Hill
Wilbur Hobby, Raleigh
Judy Leonard, Chapel Hill
Tom Loflin, Durham
Deborah Mailman, Raleigh
Fr. H. C. Mutholland, Greenville
Sister Newman, Raleigh
William G. Pfefferkorn, Winston-Salem
Daniel H. Pollitt, Chapel Hill
Herman Respess, Greensboro
Joe Schatz, Hendersonville
Jean Wagner, Chapel Hill
James J. Wall, Wilmington
Marion Wright, Linville Falls

Editor, Newsletter: Tom Tedford

Executive Director: George H. Gardner

February 8, 1978

Superintendent of Caledonia Prison
Tillery, North Carolina 27887

RE: Daniel Ross

Dear Sir:

We have received a complaint from your inmate Daniel Ross to the effect that on February 2, 1978, he was ordered out of the writ-room, and was deprived of his access to legal materials and a typewriter to the same extent these are made available to other inmates. He states also that pressure was placed on him by prison officials to withdraw a lawsuit to which he is presently a party in the United States District Court for the Eastern District of North Carolina, alleging overcrowded conditions and violations of various habitability standards in prisons. I trust that you will take proper action to insure that Mr. Ross is accorded full and equal use to legal materials and other facilities necessary to insure his access to the courts, and that efforts are not made by prison officials to get him to abandon any litigation to which he is a party.

Yours sincerely,

Norman B. Smith

NBS/mlb

cc:
Mr. Daniel Ross
Caledonia Prison
Tillery, North Carolina 27887

Ms. Deborah Mailman
Post Office Box 868
Raleigh, North Carolina 27602

JAMES B. HUNT, JR.
GOVERNOR

JAMES C. WOODARD
CHAIRMAN

State of North Carolina
Parole Commission

831 West Morgan Street
Raleigh 27603
TELEPHONE 733-3414

COMMISSIONERS
JANE G. GREENLEE
J. C. JONES
RAE H. McNAMARA
HENRY W. OXENDINE

January 19, 1978

Mr. Daniel Ross #20747-92 (KB)
Caledonia - 3305

Dear Mr. Ross:

This is in response to your January 16 letter requesting information about parole.

The file reflects that you are scheduled to be reviewed for parole consideration on August 31, 1978. I note that you are serving a life sentence for first degree murder and a 2-year concurrent sentence for assault with a deadly weapon. The Parole Commission does not parole from medium custody, and it will be necessary for you to be promoted to minimum custody before you can be paroled. In addition, the Parole Commission may desire to observe you on the Work Release Program for a period of time before consideration for parole.

I do not know what the decision of the Commission will be when your case is reviewed in August; however, you may be assured that you will receive every possible consideration at that time.

I urge you to maintain the very best possible attitude and conduct record in the future so that you may be promoted to minimum custody and be recommended for participation on the Work Release Program when you become eligible.

Sincerely,

Kaye Byrd

Kaye Byrd
Case Analyst

KB:ew

JAMES B. HUNT, JR.
GOVERNOR

JAMES C. WOODARD
CHAIRMAN

State of North Carolina
Parole Commission

831 West Morgan Street
Raleigh 27603
TELEPHONE 733-3414

COMMISSIONERS
JANE G. GREENLEE
J. C. JONES
RAE H. McNAMARA
HENRY W. OXENDINE

October 25, 1977

Mr. Daniel Ross, #20747-92 (KB)
Central Prison
#3100

Dear Mr. Ross:

Your recent letter to Mr. Cohoon, Director of Adult Probation and Parole has been forwarded to the Parole Commission for reply.

The file shows that you are serving a life sentence for First Degree Murder and that you are not eligible for parole consideration until 11-30-78.

I do not have a copy of the N. C. Parole Commission's Act. Perhaps, Congressman Conyers or Rodino with the U. S. House of Representatives can provide this information for you.

Sincerely,

Kaye Byrd

(Mrs.) Kaye Byrd
Case Analyst

KB:gm

Office Memorandum

DEPARTMENT OF CORRECTION
831 WEST MORGAN ST. RALEIGH 27603

TO: Daniel Ross # 20747-92 **PLACE:** Central #3100 **DATE:** 11/10/77

FROM: Ben L. Baker, Supervisor—Combined Records

SUBJECT: Release Date

The following information is submitted in response to your recent inquiry dated Oct. 28

1. Present sentence being served Life
2. Minimum and approximate expiration date Life
3. Maximum and approximate expiration date Life
4. Sentences to be served consecutively None
5. Sentences being served concurrently None
6. Emergency credits earned 3 mos. & 14 das. pre-trial credits
7. Credits for Work Grade I, II, or III No.I: 4-8-70 - 7-16-70; No.I: 12-8-71 - 1-19-72; No.II: 5-1-72 - 10-13-72; No.I: 10-13-72 - 10-16-72; No.I: 10-20-73 - 11-16-73; No.III: 11-16-73 - 8-1-74; No.III: 8-21-74 - 11-7-74; No.III: 11-17-74 - 7-25-75
   (If placed on or removed from one of these Work Grades, your minimum and/or maximum release date will be adjusted accordingly.)
8. Lines 6 and 7 are included in lines 2 and 3 if extra credits were reported.
9. Detainers No detainer as of this date.

If you are serving an indeterminate sentence, the final release date for this sentence will be determined by the Parole Commission.

lhp

COMMENT: Your parole eligibility date is posted as November 30, 1978.

ommitment rate high

June 11, 1978

Overcrowding in N. C. prisons intolerable burden

By Amos Reed

The writer is secretary of the N. C. Department of Corrections.

North Carolina has the unhappy distinction of having the highest rate of prison commitment of any state, and the fifth highest inmate population. North Carolina incarcerates at the rate of 240.06 per 100,000 general population as compared with the national average rate of incarceration of 94.85 per 100,000 population.

Although the inmate population fluctuates from day to day, the trend over the past several years has been steadily upward. The figure could well exceed 15,000 inmates by year's end.

This burgeoning prison population has resulted in over 1,700 inmates assigned to Central Prison which was designed for 850; as many as 140 inmates to some field units designed for 96. The result of this staggering overload is that the North Carolina prison system was standing at 2,773 inmates over its rated capacity and 586 under its emergency capacity on January 1, 1978.

The human effect on both staff and inmates is unacceptable. All programs and functions are overstrained and under-responsive.

THE PROBLEM itself is many-faceted. Our response is being mounted from many directions.

With over 14,000 inmates packed into a system with a maximum operating capacity of 13,467 the obvious and immediate reality is physical overcrowding. The building of more prisons and expansion of existing facilities is helping dramatically to relieve this problem.

(But) bricks and mortar are not looked upon as a total solution. Ways must be devised to stem the tide of the flow of inmates into the system and to accelerate the discharge of inmates who are prepared to leave the system and reenter society.

We work closely with the court system in North Carolina in affecting the disposition of offenders who enter the correction process. Every effort is being made to encourage the governmental and criminal justice leadership to appropriately divert lesser offenders to locally controlled programs, including the use of fines, restitution, probation, alcohol and drug treatment, public services, mental health programs and work release.

IN RECENT YEARS, critics of present sentencing practices have intensified their efforts to limit broad discretion of judges and of those who implement the sentences imposed by judges. They point out that justice is lost when the length of sentence is related to the individual personality of the sentencing judge. Extreme disparities in sentences bring disrepute to the criminal justice system.

Whatever is done in relation to sentencing and paroling, impact and feasibility studies should be made to insure that new laws and practices do not overload and overwhelm the prisons. Most prisons around the country are experiencing tremendous overloads of prisoners, just as we are. New sentencing laws should not be constructed in ways that increase the overload without providing support resources.

The length of sentences given to felons entering the prison system has a very definite correlation with the number of inmates in the prisons, as does the number of felons admitted as opposed to the misdemeanant admissions. During the last 10 years, the number of felons admitted into the system has more than doubled and the misdemeanant population has decreased by more than one-third.

There is little to encourage us to hope that there will be a reduction in admissions to the prison system before 1985. We are, therefore, faced with the prospect of a continuing upward spiral in our population figures. It is for this reason, plus the fact that there is considerable doubt in professional circles of incarceration alone being a practical deterrent to crime, that we are actively seeking and developing alternatives to incarceration.

A measure implemented within the last few months is the Local Confinement Act of 1977 designed to further reduce the flow of misdemeanants into the state correction system.

Under this program the North Carolina Department of Correction contracts with individual counties having certified jails servicing these offenders.

D

Reed: Judges crowd prisons

CHARLOTTE (AP) — North Carolina's prison system has two "dubious distinctions" — the highest rate of commitment in the nation and the fifth highest number of inmates, the secretary of the state Department of Correction said Monday.

"We're overusing our prison system," the secretary, Amos Reed, told the North Charlotte Rotary Club. He blamed the state's high prison population on "judicial attitudes" that result in imprisonment of many persons instead of fines, probations or placing them in public service jobs.

"Some states don't imprison people convicted of misdemeanors as we do," he said.

On another subject, Reed said in an interview that prison officials would "do the very best we can" to ensure the safety of Joan Little, who escaped from prison last October and who faces extradition from New York to finish a sentence for breaking and entering.

"There is no absolute guarantee for any citizen anywhere, but we will do the very best we can," Reed said. "It's not our staff she's afraid of, it's the inmates."

Reed told the civic club that the rate of imprisonment per 100,000 population is higher in North Carolina than anywhere in the country, but he did not have an exact percentage for the state.

North Carolina's 14,500 inmate population puts the state in fifth place nationally, behind Texas, California, Florida and New York, he said.

Reed told the group that a multimillion-dollar modernization and building program is under way to improve the overcrowded conditions in the state's 79 prisons.

Educational and self-help programs for inmates also are being used to improve the prison system, he said.

Facilities are being built or planned at Salisbury and at the present Caledonia, Odom and McCain prisons. The century-old Central Prison in Raleigh will be replaced, with bids going out in the next few weeks, he said.

Steve Murray

tice fire
Bowden
a of the

by Garry Trudeau